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OBSERVATIONS
ON THE
Statutes for Registering Deeds:

WITH A
COLLECTION OF CASES
UPON THE
OPERATION AND INTENT OF THOSE STATUTES.

TO WHICH ARE ADDED,
Instructions for carrying them into Effect;

AND A GREAT VARIETY OF
MEMORIAL PRECEDENTS,
SUITED TO THE REGISTRIES OF MIDDLESEX AND YORK.

By JOHN RIGGE,
DEPUTY REGISTER FOR MIDDLESEX.

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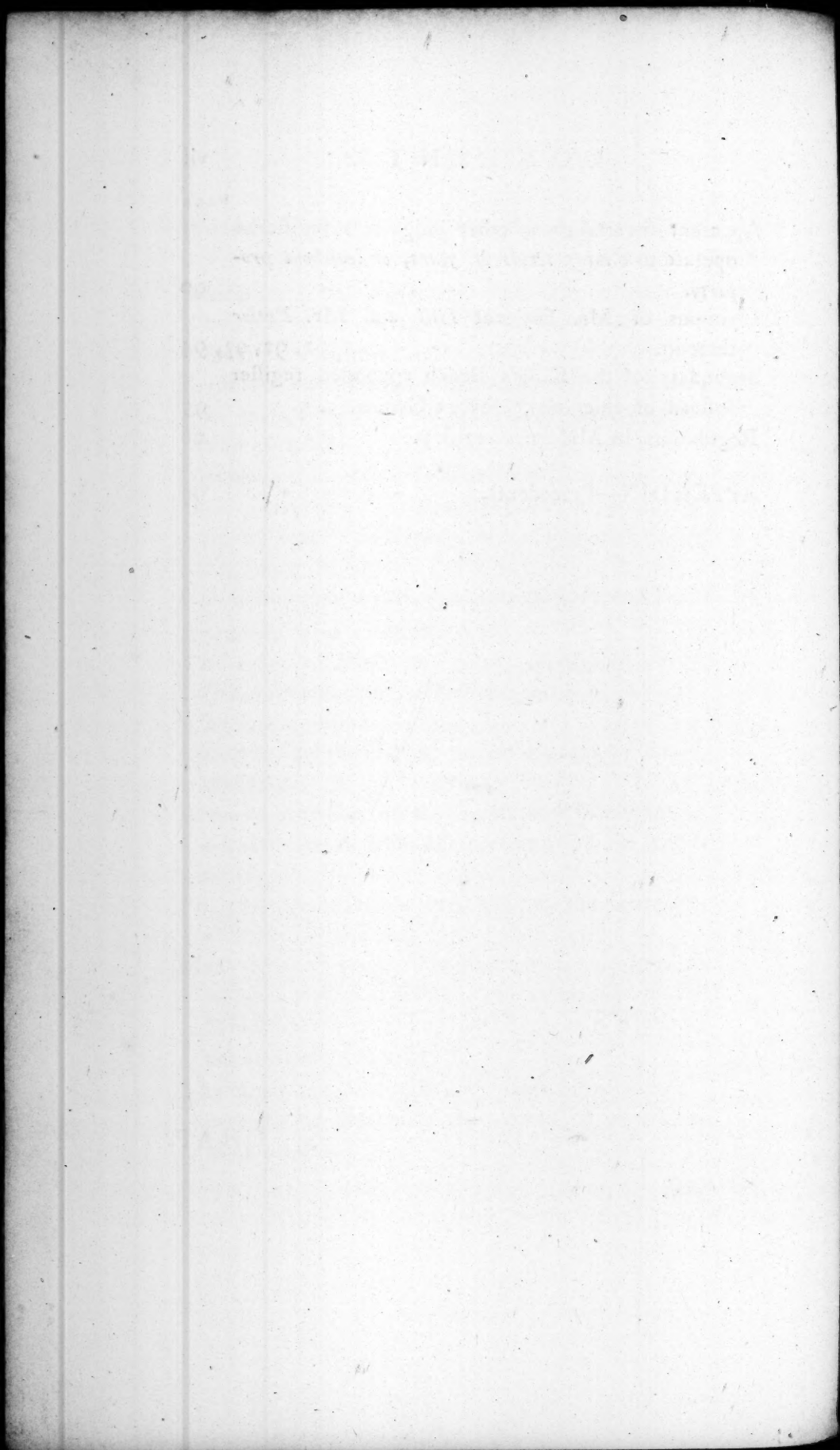
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CHAP.



CHAP. I.

General Ideas on the Acts of Parliament for registering Deeds, &c.; with Notes of Cases analogous to their Operation.

THE enlightened Sir William Blackstone, in his Commentaries on the Laws of England, slightly glancing at the acts of parliament for registering deeds, and other incumbrances of landed property in the counties of Middlesex and York, observes that, "however plausible the provisions
" of these acts may appear in theory, it hath been
" doubted by very competent judges whether more
" disputes have not arisen in those counties, by the
" inattentions and omissions of parties, than prevented by the use of registers."

If the learned commentator had adduced any facts, from his own observation, in support of these doubts, so as to depreciate the statutes in question, I should be deterred from thus stepping forward; but possessing, from my official situation, a complete opportunity to estimate the *practical* benefits of the Middlesex registering act, from which those of the three ridings of York differ in

no essential points, I trust I shall not be accused, by the dispassionate reader, of an unbecoming temerity, when I suggest that the foregoing stricture, if it can with propriety be so termed, ought not to weigh conclusively on the public mind, unsupported by any position from the authority whence it proceeds.

“ The inattentions and omissions of parties,” confessed to be the cause of disputes, no exertions of a legislature can successfully combat; nor should any complaint be made respecting the laws for registry, if these only were the sources of danger.

To say that the advantages derived from those laws are commensurate with the benefits proposed in their preambles, might be thought too bold an assertion; but any deficiency is, in my opinion, more to be attributed to the contrary decisions obtained upon their construction, and which it is my chief motive in this address to point out, than to the legislature which framed them.

It is an incontrovertible truth that in the county of Middlesex manifold frauds and difficulties of title are, by the operation of the statute relating to it, almost daily avoided: and although it may be possible that the evils arising out of the necessity to register deeds have been numerous, I must be allowed correct, when I assert that very few cases are discoverable in the report books to warrant such an opinion.

In considering the effects produced by the written laws, one remark will be familiar to every discriminating

minating man, namely, that their advantages generally pass within the observation of those alone who derive a substantial benefit from them; but if any circumstance arises productive of dispute, it is (as it undoubtedly should be) immediately published: and then prejudice often obtains, without an attempt to distinguish whether the statute, or its expostor, most deserves reprobation.

The events of questions argued since the passing of the register acts upon the doctrine of *notice*, as applying to purchasers and mortgagees, instead of producing a greater confidence in the minds of individuals, respecting their safety in purchasing lands, or lending money on land security, have excited more doubts of the efficacy of those acts than any other cause; for that absolute and positive necessity for registering deeds and conveyances, which, by their language, is clearly and succinctly expressed, seems, by some of the determinations of great legal authorities, to be rendered almost nugatory.

My immediate view for entering upon this address is, as I have before hinted, to yield a fair and impartial representation of the arguments suggested, and decisions obtained upon several points relative to registry; but more particularly on that of *notice*: thereby affording those of my readers who have not already investigated the cases upon which such arguments and decisions are founded, the power to calculate upon their efficacy or danger with very little trouble.

In bringing these before the public, I have sometimes taken the liberty to comment on their propriety: but I beg to premise that, whenever I have so done, it has been the consequence only of finding no observation supplied by other persons.

If, in my attempts, I have succeeded either to elucidate the law, or correct erroneous opinions upon it, I shall be sensibly gratified: that the best opportunity, notwithstanding, may be given for the exercise of every person's judgment to approve or repel the arguments advanced, I have inserted, *verbatim*, all the cases from the law books in notes, as much in order of time as possible.

The first wherein the question of *notice* presents itself, and which is not fully related in any of the cases hereafter cited, is *Chival v. Nichols*, Strange 664. (a) determined in Michaelmas term 12 Geo. I.

Here

(a) *Chival v. Nichols*.

Annuity granted out of lands lying in Middlesex. A. hath notice of this grant, and then purchases the inheritance of the lands. The grantee shall have his annuity against A. though his grant was not registered.

One John Hall was possessed of a term of years in certain lands, lying in the county of Middlesex, and granted an annuity of 40l. to the plaintiff, to be issuing out of the lands. The defendant being concerned for this Hall in the management of some of his affairs, knew that Hall had granted this annuity to the plaintiff, and had seen the deed, and paid him part of the annuity on Hall's account. Afterwards Hall purchases the reversion of these lands, and then the defendant purchases the reversion and the term of Hall. Hall dies, and the defendant refused

Here a fraudulent intention on the part of the defendant is clearly defined; and, although this decision appears contradictory to the law on the subject of registry, yet its only bad effect was an introduction of future discussions on the *equity of notice*, prejudicial to the due understanding of the purposes intended to be promoted by the statutes.

The cases of *Bedford v. Backhouse*, and *Wrightson v. Hudson*, come next in succession: the first deter-

refused to pay the plaintiff his annuity, because the deed by which Hall had granted it was not registered, according to the statute 7 Ann. c. 20.; which requires that all deeds or conveyances of, and all incumbrances upon lands lying in the county of Middlesex shall be registered within such a time at the office; otherwise every such conveyance shall be void against any subsequent purchaser for a valuable consideration. The defendant, therefore, insisted that he was a subsequent purchaser for a valuable consideration; and that the plaintiff's claim of an annuity could not affect him, because it was not registered.

The whole court were clearly of opinion, that the plaintiff was entitled to have his annuity out of these lands against the defendant, notwithstanding this statute. For the statute only intended to give such notice of former incumbrances to purchasers, that they might not thereby be defrauded. But if a man knows, of his own knowledge, that there is a prior incumbrance, and, notwithstanding that knowledge, will be a purchaser, the statute was never intended to relieve such, though the first incumbrance was not registered: for where a man purchases with notice of a first incumbrance, he purchases with an ill conscience; and in a court of equity his purchase shall never be established.—Therefore they decreed the plaintiff his annuity and the arrears.

determined by Lord Chancellor King, on the 26th Nov. 1730, and the latter on the 16th Feb. 1737, by Sir Joseph Jekyll at the Rolls; Eq. Ca. Abr. vol. 2. p. 615. and *ibid.* p. 609. both avowedly printed from MS. Reports (*b*).

Such

(*b*) *Bedford v. Backhouse vel Bacchus*, MS. Report.

A. lent money on a mortgage of lands in Middlesex, and the mortgage was duly registered. Afterwards B. lent money on the same security, and his mortgage was registered. Then A. advanced a further sum upon the same lands, without notice of the second mortgage. And it was held by Lord Chancellor King, *that the registry of the second mortgage was not constructive notice* to the first mortgagee, before the advancement of the latter sum; for though the statute avoids deeds not registered, as against purchasers, yet it gives no greater efficacy to deeds that are registered than they had before; and the constant rule of equity is, that if a first mortgagee lends a further sum of money, without notice of the second mortgage, his whole money shall be paid in the first place.

Wrightson v. Hudson.

Wrightson advanced 800l. on a mortgage in Yorkshire, and registered his mortgage, and afterwards *Hudson* lent a sum of money and took a judgment for it, which was registered; and then *Wrightson* advanced 270l. more, but without any *express* notice of *Hudson's* judgment; though it was argued on a bill brought by *Wrightson* to foreclose, that *Hudson* ought to redeem upon paying the *first* mortgage: for that, where such registers prevail, every incumbrance should be satisfied according to the priority of its registry; and that the registering *Hudson's* judgment, was constructive notice to *Wrightson* sufficient to deprive him of the common benefit of a court of equity, whereby a first mortgagee, without notice, is to hold till all subsequent incumbrances are discharged.

Yet

Such decisions aim at the very existence of the register acts, in denying the registry to be constructive notice to purchasers and mortgagees of antecedent incumbrances; the contrary intent having been the very soul and essence of their institution, and deprived of which their effect would be, according to the emphatic expression of Lord Hardwicke upon a future occasion, only that of mere waste paper.

The result of these cases may be candidly considered as the opinion of one person; for Sir Joseph Jekyll, as Master of the Rolls, could not well deny the doctrine of the higher authority, which had so recently decided before him. They apply exactly to so much of the general law of mortgages as bears affinity to notice, and the tacking of first incumbrances, abstracted from any consideration of the statutes for registry, upon which the arguments of counsel in the latter case seem very pertinent.

Previously

Yet it was resolved, that these statutes avoid only prior charges not registered, but did not give subsequent conveyances any further force against prior ones registered than they had before. That to have affected Mr. Wrightson, Hudson ought to have given him notice when he advanced his money, and that *though Wrightson might have searched the register he was not bound to do it*, and therefore it was decreed that Hudson and the mortgagor should be foreclosed, unless they paid off both plaintiff's securities.

Previously to the operation of those statutes, it was the uniform rule (founded upon principles, no doubt, of law and equity) that the holder of a first mortgage might defeat the security of mesne incumbrances by the acceptance of a further charge, provided he had not notice of the intermediate securities, as in the cases last cited.—So likewise, where more than one mortgage upon an estate existed, and the last mortgagee, or even a judgment creditor, not having had notice at the time of lending his money to the mortgagor, of any but the first mortgage, advanced to the first mortgagee his principal interest and costs (if any had been incurred), such last mortgagee or judgment creditor was entitled to stand in the precise situation of the first mortgagee, with respect to the sum due on his security, and was also entitled, as the consequence of defraying him, to be preferred to the mesne incumbrancers, in respect of his own mortgage or judgment, and to postpone all other claims to his own; upon the principle that, in such cases, the legal and equitable estates concentered in the same person.

This representation of the doctrine of notice, as obtaining upon the general law of mortgages, cannot fail to be already sufficiently comprehended by most of my professional readers; but, as there will, probably, be some to whose use it may contribute, and, moreover, as it will yield a more complete

complete opportunity to ascertain in how great a degree, and to what effect it was the intention of the legislature to benefit the subject in the promulgation of registry, I have ventured the statement.

Courts of equity had gone very far indeed to espouse the principle of purchasing first incumbrances, in exclusion of intervening ones (c); and their

(c) *Edmunds v. Povey et al.* Vern. Rep. Vol. 1. p. 187. edit. 1683.

The principal question in this case was touching the buying in of incumbrances, viz. where there are first, second, and third mortgagees, who had all lent their money without notice. The third mortgagee, hearing of the two former securities, buys in the first incumbrance, to wit, a judgment *that was satisfied*; and it was strongly insisted at the bar, that though this trade of buying in incumbrances had been formerly countenanced there, yet that it was, in truth, a thing against conscience, and contrary to many established rules of law and equity. But, after long debate, the lord keeper told them he wondered the counsel laid their shoulders to a point that had been so long since settled, and received as the constant course of chancery. It is true there have been strong arguments used against the unreasonableness of this practice; and there might be, likewise, strong reasons brought for the maintaining of it, and so was, at first, a case very disputable; but being once solemnly settled, as it was in the case of *Marsh v. Lee* (1 Ch. 162.), he would not now suffer the point to be stirred. The counsel, in their own justification, replied, that his lordship, when this cause came first before him, had referred it to Sir Adam Ottley to state the case specially, and it now came before him on the Master's report, and there was no other point in the case but this; and, therefore, they supposed his
lordship

their determinations, added to the confusion arising from precedency amongst incumbrancers, upon the doctrine of implied or constructive notice, furnished the idea of giving, upon record, such information to the fair and honest purchaser or mortgagee as should effectually prevent his being led into error,

The like uncertainty and confusion had been attempted to be obviated, in some degree, by the statute of the 4th and 5th *William & Mary*, c. 16. *against clandestine mortgages*; the operation of which, on the distressed and unwary, was, I apprehend, defeated by the passing of the register acts, so far as the latter locally attach: for no secret or fraudulent conveyance *can* occur in the register counties, if the intent of those acts is carried into effect.

Now it would seem by the assertion of Sir Joseph Jekyll, *that a person is not bound to search*
the

lordship intended they should be at liberty to speak to that matter.—But his lordship declared he would not change the rule that had so long prevailed in this case; but it may be he might do so when he found a man designing a fraud, and thought to make a trade of cozening by the rules of the court.

Serjeant Pemberton moved that, as to the point of notice, he supposed his lordship meant that a man that buys in a prior incumbrance must do it without notice of the middle incumbrance, not only when he lent his money, but also at the time when he bought in the prior incumbrance; *sed non allocatur.*

the register, as if the courts of equity, emulous to persevere in old opinions, had intentionally endeavoured to confound the interpretation of the statutes under consideration; which, in supplying a radical means to defeat imposition, certainly deserve to be respected and upheld.

The system of the general law of mortgages, so far as it related to notice, seems to me to have become partially altered by the establishment of registers; upon the principle that the exercise of a caution, pointed out by the legislature, would protect all parties from injustice; and further, that the reasonable and legal construction of the statutes demands that every individual, before he advances money to the proprietor of the equity of redemption, is bound, or the omission is at his peril, to search the register for incumbrances up to the date of his security.

Such necessity, it is evident, would prevent the fraudulent mortgagor from establishing an ulterior charge, for the mere purpose of defeating intermediate or secondary incumbrances; a practice which has had very frequent operation in counties where the registry does not extend, to the material detriment of honest and *bonâ fide* incumbrancers.

I readily concur in the reasonableness of giving notice to a first mortgagee on the creation of a second incumbrance, though I think the register acts meant to avoid such a measure as an absolute
rule

rule of proceeding: and it ought to be remembered that, from uncertainty of a mortgagee's residence, or some other unavoidable cause, the giving such notice is not always practicable; whilst, on the other hand, inquiry from the registry is positively certain.

My readers will not fail to be surprised when I inform them that little better than four years had elapsed after the determination of Sir Joseph Jekyll, when Lord Hardwicke, in the case of *Hine v. Dodd*, 2 Atk. ²⁷⁵~~204~~ (d) asserted, "that the
" Register

(d) *Hine v. Dodd*, March 13, 1741.

The plaintiff, a judgment creditor upon an estate in Middlesex, prays to be let in upon it, preferably to the defendant, a mortgagee of the same estate, upon a suggestion he had notice of the judgment before the mortgage was executed: the judgment was entered on the 12th March 1733, but not registered till the 12th June 1735. The mortgage was made the 24th May 1735, and registered June 2d, 1735. There being only a defendant's confession of notice proved, in direct contradiction to his answer, and contrary to a positive act of parliament made to prevent perjury. Lord Hardwicke decreed so far as the bill seeks to postpone the defendant's mortgage, it should be dismissed with costs.

The bill was brought by a judgment creditor to be let in upon an estate of one *Proof* and his wife in Middlesex, preferably to the defendant, who was a mortgagee of the same estate, upon a suggestion that the defendant had notice of the judgment before the mortgage was executed; and likewise to inquire into the consideration of the mortgage.

The judgment was entered upon the 12th March 1733; but not registered till the 12th June 1735.

The mortgage was made the 24th May 1735, and registered June 2d, 1735.

Lord CHANCELLOR.—This case depends upon the notice the defendant had of the judgment before his mortgage was registered.

The

" *Register Act, the seventh of Ann. c. 20. was*
 " *notice to the parties, and a notice to every body;*
 " *and*

The register act, the 7th of Ann. c. 20. is notice to the parties, and a notice to every body; and the meaning of this statute was to prevent parol proofs of notice, or not notice.

But, notwithstanding, there are cases where this court have broke in upon this, though one incumbrance was registered before another; but it was in cases of fraud. The first was an Irish cause in the house of lords (*Lord Forbes v. Nelson*); the next was a Yorkshire cause before Lord Chancellor King (*Blades v. Blades*). There may possibly have been cases upon notice divested of fraud, but then the proof must be extremely clear.

But though in the present case there are strong circumstances of notice before the execution of the mortgage, yet upon mere suspicion only I will not overturn a positive law.

The first evidence is Elizabeth Hine; but I cannot lay any great stress upon her deposition:—it is only an account of a conversation at the Devil Tavern, where the plaintiff was present with Dodd and Burton, the agent of Dodd.—The next is Thomas Price, who swears, that the plaintiff told Burton he knew of this judgment before Dodd's mortgage, and that defendant Dodd did not deny what the plaintiff said to Burton; but then he does not swear that Dodd heard what the plaintiff said.

The most material evidence is Sarah Hine, who was present with the plaintiff Burton and Dodd on the 18th June 1738, at a meeting, in order to adjust all matters in difference between them. She swears that the plaintiff then charged Dodd with notice of the judgment, prior to the execution of the mortgage,

The register act is notice to every body, and the meaning of it was to prevent parol proofs of notice.

It is only in cases of fraud the court have broke in upon the act; though one incumbrance was registered before another.

“ and the meaning of the statute was to prevent
 “ parol proofs of notice, or not notice.”

Not

gage, and that Dodd answered it was true he knew of the judgment, but that he knew at the same time it was not registered; and what were acts of parliament for, unless they were effectually observed?

Undoubtedly this is a material evidence; but then it is only one witness against the answer of the defendant.—It is true his answer is very loose, by referring from one answer to another; but in the last he swears to his belief, that he did not know of the judgment till after the mortgage was executed.

So that there is barely the evidence of a defendant's confession, in contradiction to his answer, and contrary to a positive act of parliament, *made to prevent any temptation to perjury from contrariety of evidence.*

Some stress has been laid upon Burton's being an agent of Dodd, and likewise the solicitor in the case of Hine and Proof; but as this suit was two years before Dodd's mortgage, it will not affect Dodd with notice. *But what weighs principally with me is, the great danger of overturning an act of parliament, and making it mere waste paper.*

Clear notice is a proper ground for relief; but suspicion of notice, though a strong one, will not justify the court in breaking in upon an act of parliament.

To be sure, apparent fraud, or clear and undoubted notice, would be a proper ground of relief; but suspicion of notice, though a strong suspicion, is not sufficient to justify the court in breaking in upon an act of parliament.

His lordship therefore decreed, so far as the plaintiff's bill seeks relief by postponing the defendant Dodd's mortgage to the plaintiff's judgment, that it be dismissed without costs. But being doubtful as to the consideration of the mortgage, he referred it to a Master to take an account of what was justly and *bonâ fide* due to the defendant Dodd before, and at the time the mortgage was executed: but would not direct the inquiry

Not only endless perjuries, but uncertainty of safety to purchasers and mortgagees, in an extreme degree, would arise from a contrary doctrine, and nothing but the decision on the case of Wrightson and Hudson could have emboldened the plaintiff in that now before us to step forward for redress. If any determination opposite to the one expressed in the latter instance had obtained on the question therein agitated, then indeed would the statutes for registry be reduced, according to the expression of Lord Hardwicke, into *mere waste paper*: in proof of which I shall here transcribe the imperative language contained in the statute for Middlesex, in relation to the registering of judgments, (which description of security the plaintiff's was,) and leave further comment to my readers. " And
 " be it further enacted by the authority aforesaid,
 " that no judgment, statute, or recognizance,
 " other than such as shall be entered in the name
 " and upon the proper account of her majesty,
 " her heirs and successors, which shall be obtained,
 " or entered into after the said twenty-ninth day of
 " September in the said year of our Lord one
 " thousand

inquiry as to the sums of money pretended to be advanced by him after the mortgage; because there was no positive evidence as to the sums advanced afterwards, but only hear-say, and information from the defendant Dodd that such an one heard him say, and another was informed by him that he paid part of the consideration after the mortgage was executed.

“ thousand seven hundred and nine, shall affect,
 “ or bind any honors, manors, lands, tenements,
 “ or hereditaments, situate, lying, and being in
 “ the said county of Middlesex, *but only from the*
 “ *time that a memorial of such judgment, statute,*
 “ *or recognizance, shall be entered at the said*
 “ *Register's office.*”

The case of *Le Neve* versus *Le Neve*, 1 Vez. 64.
 and 3 Atk. 254. (e) also decided by Lord Hardwicke,
 on

(e) *Le Neve* v. *Le Neve*.—December 9, 1748.

The cause stood for judgment.

The agent of the defendant having full notice of the first articles, made on her husband's first marriage; this is notice likewise to her, and is also a sufficient equity in the plaintiffs to postpone the second articles and settlement, notwithstanding these only have been registered.

of Edward Le Neve, and the issue of that marriage, by articles previous to the marriage, dated July 1, 1718, and that the conveyances made by the defendant Edward Le Neve, and the defendant Mary his wife to two trustees, may be set aside and delivered up as voluntary, being made after notice of the articles of July 1, 1718, or of the other conveyances made in pursuance thereof, and to have the leasehold estates exonerated and disencumbered.

The facts were, that in 1718 the defendant Edward Le Neve intermarried with his first wife Henrietta Le Neve, who had a considerable fortune, and articles were executed previous to the

Lord CHANCELLOR.—The bill was brought by the plaintiffs Peter Le Neve and Hugh Pigott, and Elizabeth his wife, late Elizabeth Le Neve, as the only surviving children of the defendant Edward Le Neve, by Henrietta his late wife, deceased.

The end of the bill was, in general, to have the execution of a trust of leasehold estates settled upon the late wife

on *Dec. 9, 1748*, comes next in succession, and I beg to recommend the attentive perusal of it; as
the

the marriage, dated July 1, 1718; whereby the father of Edward, in consideration of Henrietta's fortune, &c. covenanted with trustees to convey to them several estates, and some leasehold, amongst the rest, near Soho-square, in the county of Middlesex; to permit Edward Le Neve the younger to receive the rents and profits during his own life, and after his death to pay to Henrietta 250*l.* a year, in case she survived Edward; and, after the decease of Edward and Henrietta, that the said estates should remain to their issue, in such manner as Edward the younger should, by will or otherwise, appoint; and, for want of such issue, to the use of Edward Le Neve, the father, and his heirs.

The 16th June 1719, a settlement was made, in pursuance of the articles.

The marriage took effect, and Edward and Henrietta had issue the plaintiffs Peter and Elizabeth; and Henrietta died in July 1740, leaving no other children.

Twenty-five years after the first marriage, Edward Le Neve entered into a treaty of marriage with the defendant Mary; and, by articles dated Nov. 16, 1743, previous to the marriage, Edward, in consideration of such marriage, covenanted with the trustees, the defendants Dandridge and Norton, to convey these very leasehold estates near Soho-square to them, their executors, &c. within three months after the marriage, in trust to pay the defendant Mary, out of the rents of these messuages, in case she survived him, a clear annuity of one hundred and fifty pounds for her life, for her jointure, &c.

The marriage took effect, and, three months after, on the 20th Jan. 1743, a settlement was made, pursuant to the articles.

The settled estate, consisting of houses in Middlesex, was subject to the Register Act of 7 Ann. c. 20.

the registering acts, and several previous decisions upon them are therein treated much at large.—
Indeed

The second articles and settlement were registered, but not the first.

Edward Le Neve mortgaged the houses likewise.

The bill was brought in order to set the second articles and settlement out of the way, and that they may be postponed to the first articles and settlement, upon this equity that the defendant, Mary Le Neve, had notice of them.

The counsel for the plaintiffs admit, that the registering the second articles and settlement have, in point of law, affected the leasehold estates; as the statute of the 7th of Ann gives the legal estate where the effect of the registering act has placed it.

Then the question is, whether equity will enable the children of the first marriage to get the better of the defendant's legal right; and this will depend upon the question of *notice*.

First, Whether it appears sufficiently Joseph Norton was attorney for the defendant Mary, in the transaction of her marriage.

Secondly, Whether Norton himself had sufficient notice of the first articles and settlement.

Thirdly, Whether that will affect Mary, as a purchaser, and postpone her articles and settlement, notwithstanding the Register Act.

The first will depend upon the answer of the defendant Mary.—She has in general denied any notice of the first articles and settlement till six months after the marriage, and says, “ that the defendant Joseph Norton was so far from
“ being employed as solicitor for her in transacting the business of the marriage articles and settlement, that he had
“ been for a considerable time before employed as an attorney
“ for Edward Le Neve her husband; that, being at the time
“ of

Indeed it forms of itself an almost perfect compendium of cases on the subject of registration.

Its

“ of marriage concerned for her husband, she was thereupon
 “ induced to place confidence in him, and her husband assured
 “ her he would take care there should be a handsome provision made for her, and recommended Norton as a proper
 “ person to prepare the deeds, whereby such settlement was
 “ to be made upon her; to which she consented; and that
 “ Norton assured her, that he had taken care to secure her
 “ one hundred and fifty pounds a-year, by way of jointure;
 “ and did not then, or at any time before her intermarriage,
 “ give her any notice of any former settlement.”

It has been insisted by the defendant Mary's counsel that Joseph Norton was not her attorney, or agent, but her husband's; and that the attorney for one party having notice, will not affect her with notice.

I am of opinion, she has admitted enough of her side to make him attorney, or agent, for her; for if she placed confidence in Joseph Norton, no matter on whose recommendation; if she relied enough on her husband to take his recommendation, it is sufficient:—or

otherwise it would be mischievous and inconvenient, if this court was to take into their consideration from whom the recommendation comes; for in purchases, but more especially in mortgages, very frequently the same counsel and agents are employed on both sides, and therefore each side is affected with notice, as much as if different counsel and agents had been employed.

As in purchases, and especially in mortgages, the same counsel and agents are frequently employed on both sides; therefore each side is affected with notice, as much as if different counsel and agents had been employed.

It is material how far the cases have gone on this point: two have been cited, *Brotherton versus Hatt*, 2 Vern. 574. and *Jennings versus Blincorne* and others, 2 Vern. 609. The

Its determination has not, in my idea, the semblance of strict justice; but as I discover it referred
to

first was shortly this, A. makes three several mortgages to B. C. and D.; and in the last mortgage B. is a party, and agrees, that after he is paid, he will stand a trustee for D. Decreed, that C. should be paid before D.: for, all the securities being transacted by the same scrivener, notice to him was notice to D.

See how far this goes; the same scriveners were witnesses, and engrossed all the securities, and were in nature of agents for all the lenders, and very likely for the borrower himself; and, notwithstanding it does not appear Mrs. Hatt had personal notice, yet *notice to the agent is notice to the party, and consequently they that lend last must come last, having notice of what was before lent; and if any one, after notice, lend more money, although they should obtain the legal estate, yet would in equity stand affected with the notice, and bound thereby.*

The second case was no more than this: *Blincorne*, having notice of an incumbrance, purchases in the name of *Moore*, and then agrees that *Moore* shall be the purchaser, and he accordingly pays the purchase money, without notice of the incumbrance; though *Moore* did not employ *Blincorne*, nor knew any thing of the purchase till after it was made, yet *Moore* approving it afterwards, made *Blincorne* his agent *ab initio*; and, therefore, shall be affected with the notice to *Blincorne*.

The last goes a great way; for *Moore* knew nothing of the transaction; and yet the court held that his approving of it afterwards, made *Blincorne* his agent *ab initio*. This carries it further than the present: but the first is a clear authority.

These cases therefore sufficiently prove, it is not at all material to the plaintiffs on whose advice or recommendation the
defendant

to in a publication of high authority, I mean the notes of Messrs. Hargrave and Butler on Co. Lit.
1st

defendant Mary intrusted Norton; nor does it make any difference that it is the recommendation of the husband, any more than of any other person.

The second consideration will be, if it appears clearly that Norton was employed by the defendant Mary, then whether there is sufficient evidence of notice to him.

An objection has been taken by the defendant Mary's counsel, that as notice hath been denied by her answer, if it is sworn to by one witness only, that being but oath against oath, it cannot prevail to establish the fact.

Where a fact is denied by an answer, and sworn to by one witness only, that being but oath against oath, it cannot prevail to establish the fact; but then the denial must be clear, otherwise it makes a difference.

The general rule, to be sure, is so; but it admits of this distinction, where the denial of a defendant is clear it has been adhered to; but where the answer is not a positive denial of the same fact, but only as to part, as in the present case, as to the notice to herself only, it makes a difference.

And there are many cases where the court upon the testimony of one witness, whose credit is unimpeached, and what he swears uncontradicted by the answer, have decreed upon this single evidence.

Many cases where the court have decreed upon the testimony of one witness, when what he swears is uncontradicted by the answer.

The defendant Mary denies notice to herself, but whether there was notice to another person, her agent, she passes by, without giving any answer.

This is a denial, indeed, as to herself; but is at the same time what is called at law a negative pregnant that there was notice to her agent.

Denying notice as to herself only, is a negative pregnant there was notice to her agent.

1st Inst., I shall give the stricture of the learned authors, instead of obtruding any text of my own.

It

As to the evidence of notice to Norton it is extremely strong; for he swears, that he had notice of the first articles some time before the second marriage, and that he had then a copy thereof from the defendant Edward Le Neve, in order to take counsel's opinion thereon how to be secure against the effect of them, and to contrive in what manner they might get the better of these articles: and therefore, as to Norton, there cannot be a stronger notice.

See *Sheldon v. Cox* and others, Amb. Rep. p. 624.

The third, and last question is, whether the notice to Norton will affect the defendant Mary, as a purchaser, and postpone her articles and settlement, notwithstanding the Register Act. This depends upon two things:

First, Whether any notice whatsoever would be sufficient to take from the defendant, Mary Le Neve, the benefit of the Register Act.

Secondly, Whether personal notice to the defendant Mary is requisite to postpone her, or whether notice to her agent is sufficient to do it likewise.

As to the first, it is a question of great extent and consequence.

The preamble to the statute of 7 Ann. c. 20. is in substance.—

“Whereas, by the different and secret ways of conveying lands, &c. such as are ill-disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons have been undone in their purchases and mortgages by prior and secret conveyances, and fraudulent incumbrances.”

Then comes the enacting clause.—“That a memorial of all deeds and conveyances which, after the 29th of September 1709, shall be made and executed; and of all wills and devises in writing whereby any honors, manors, lands,

It is there observed, that “ amongst the attempts
“ made by our legislature at different times to re-
“ medy

“ lands, &c. in the county of Middlesex, may be any way
“ affected, in law, or equity, may be registered in such man-
“ ner as is after directed : and that every such deed, or con-
“ veyance, that shall at any time after, &c. be made and
“ executed, shall be adjudged fraudulent and void against any
“ subsequent purchaser or mortgagee, for a valuable consider-
“ ation, unless such memorial thereof be registered, as by
“ this act is directed, before the registering of the memorial
“ of the deed or conveyance under which such subsequent
“ purchaser or mortgagee shall claim,” &c.

What appears by the preamble to be the intention of the act ? Plainly to secure subsequent purchasers and mortgagees against *prior secret conveyances* and fraudulent incumbrances !

Where a person had no notice of a prior conveyance, there the registering his subsequent conveyance shall prevail against the prior ; but if he had notice of a prior conveyance, then that was not a secret conveyance by which he could be prejudiced.

The enacting clause says, *that every such deed shall be void against any subsequent purchaser or mortgagee, unless the memorial thereof be registered, &c.* that is, it gives them the legal estate ; but it does not say, that such subsequent purchaser is not left open to any equity, which a prior purchaser or incumbrancer may have ; for he can be in no danger where he knows of another incumbrance, because he might then have stopped his hand from proceeding.

The intent of the Register Act to secure subsequent purchasers against prior secret conveyances.

If a subsequent purchaser had notice of a prior conveyance, then that was not a *secret conveyance*.

The enacting clause gives a subsequent purchaser the legal estate, but it does not say he is not left open to any equity which a prior purchaser or incumbrancer may have.

“ medy the mischief arising from the secret transfer
 “ of property, may be reckoned the statutes against
 “ fraud-

This case has been very properly compared to cases on the 27 Henry VIII. for the enrolment of bargains and sales.

That act was formed pretty much in the same manner with this. The words of the enacting clause are, “ that from, &c. “ no manors, lands, tenements, &c. shall pass, alter, or “ change from one to another, whereby any estate of inheritance or freehold shall be made, or take effect in any “ person or persons, *or any use thereof* to be made by reason “ only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and “ enrolled in one of the king’s courts of record at Westminster, or else within the same county, &c. where the same “ manors, &c. so bargained and sold lie, &c.; and the same “ enrolment to be had and made within six months next after “ the date of the same writings,” &c.

“ *Nor any use thereof shall pass from one to another.*”

What is the meaning of this?—

Before the making of the act, any paper writing passed the use from the bargainer to the bargainee, whereby great mischiefs arose, for it entangled purchasers, affected and injured the crown, and was contrary to the rule of law, which required notoriety in purchases, by feoffment and livery, &c.

Under the statute for enrolment of deeds, if a subsequent bargainee has notice of a prior, he is equally affected with that notice, as if the prior purchase had been a conveyance by feoffment and livery, &c.

But what has been the construction of this statute ever since? Why, if a subsequent bargainee has notice of a prior, he is equally affected with that notice, as if the prior purchase had been a conveyance by livery, &c.

The

“ fraudulent conveyances and devises, 13 *Eliz.* c. 5.

“ 27 *Eliz.* c. 4. and 3 *Will. & Mary*, c. 14.;

“ but

The operation of both acts of parliament, and construction of them, are the same; and it would be a most mischievous thing if a person, taking the advantage of the legal form appointed by an act of parliament, might, under that, protect himself against a person who had a prior equity, *of which he had notice.*

To let a person take advantage of the legal form appointed by an act of parliament, and protect himself against another who had a prior equity, of which he had notice, would be of mischievous consequence.

The cases put by the attorney-general are very material.

Suppose, said he, the defendant Mary had, by letter of attorney, empowered Norton to transact the affair with her husband, and he, by means of this agency, comes to the knowledge of the prior articles and settlement, would not this affect the principal? Or suppose a purchaser of lands in a Register county orders his attorney to register it, and he neglects to do it, and then buys the estate himself, and registers his own conveyance; shall this be allowed to prevail? It certainly shall not; for such a person is out of the consequences which the Register Act guards against, of imposition from a *prior secret conveyance*, as he had personal knowledge of the first.

There have been three cases on the Register Act.

First, *Lord Forbes and Nelson.*

Secondly, *Blades versus Blades*, Eq. Ca. Abr. 358.

Thirdly, *Chival versus Nichols*, Dec. 10, 1725, in the Exchequer.

The first arose originally in Ireland, where there is a general Register Act, and heard on an appeal to the House of Lords in England, the 22d and 23d of February 1722.

The Earl of Granard, father of Lord Forbes, was seized of a large estate, of which he was tenant for life, with remainder
to

“ but particularly the statute of 29 *Car. II. c. 3.*
 “ commonly called the statute of frauds and per-
 “ juries,

to his first and every other son in tail, and had a power of leasing for lives, at the best rent.

The Register Act in Ireland passed the 6th of Queen Ann.

Lord Granard granted a lease for three lives, at the rent of thirty pounds a-year, but it was not registered. His lordship being greatly in debt came to an agreement with Lord Forbes, his eldest son, by the agency of Mr. Steward, to take upon him the payment of certain debts of his father, and to secure a jointure to his mother-in-law, and an annuity to his father. The estate was conveyed to trustees, Mr. Justice Doyne and Mr. Justice Nutt, during the life of the father. Mr. Steward had notice of this lease, during the treaty between Lord Granard and Forbes. The conveyance to the trustees being registered, they brought an ejectment against the lessee of the lifehold estate, and it was heard before Lord Middleton, Chancellor of Ireland, in February 1721, who then made a declaration, rather than a decree, that the conveyance was void as against the lessee. It came on again before him the 17th February 1721-2; and he then determined there was full notice of the lease to Lord Forbes, and awarded a perpetual injunction from time to time. The judgment of the House of Lords was, that the said decree be reversed; and that all proceedings at law of the appellants against the respondents should, during the life of Lord Granard, be stayed, on the lessees paying the rents, performing the covenants, &c.; but that, after the death of Lord Granard, Lord Forbes might be at liberty to try the tenants right to the lease.

The decree was reversed, not because Lord Middleton had proceeded upon a wrong principle, but had drawn a wrong inference from it; for Lord Forbes did not insist merely on the register, but that the lease was made contrary to the power,
 and

“juries, which provides against conveying any
 “lands or hereditaments for, more than three
 “years,

and therefore the Lord Chancellor of Ireland was mistaken, and wrong in decreeing the lease to be good in every respect; and the House of Lords set the decree right only as to this particular part, that, after the death of Lord Granard, the estate would determine; and therefore it was left open to Lord Forbes to dispute, whether it was a lease pursuant to the power; but gave no relief as to the Register Act.

The case of *Blades v. Blades* came before Lord Chancellor King the 2d of May 1727. William Blades in 1716 devised certain lands to his wife for her life, and, after her death, to his nine children; the wife enters, but does not register the will. The heir at law mortgages the estate, and the mortgagee has it registered; and, upon a bill brought against him, denies notice of the will; but it was proved in evidence, that he had notice; and the court said that having notice of the first purchase, though it was not registered, bound him, and that his getting his own purchase deed first registered was a fraud: the design of those acts being only to give parties notice, who might otherwise, without such registry, be in danger of being imposed on by a prior purchase or mortgage, which they are in no danger of when they have any notice thereof, in any manner, though not by registry. And that they would never suffer an act of parliament, made to prevent fraud, to be a protection to fraud; and therefore decreed for the plaintiff, looking upon the transaction between the heir at law and the mortgagee to be collusive.

I mention this, not only as a material authority, but as determined by Lord Chancellor King, whom we all know was as willing to adhere to the common law as any judge that ever sat there.

Lord King as inclinable to adhere to the common law, as any judge that ever sat in Chancery.

The

“ years, or declaring trusts of them, otherwise
 “ than by writing. *With the same views have been*
“ passed

The other case of *Chival v. Nicholls*, was in the court of Exchequer, the 10th of Dec. 1725, before Lord Chief Baron Gilbert, and is a clear authority for giving relief against the Registry Act upon an equity of notice; but then there were charges of fraudulent circumstances besides, and therefore is not so similar to the present.

The ground of the determination in these cases is, that the taking of a legal estate after notice of a prior right, makes a person a *malâ fide* purchaser, and is a species of fraud, and agrees with the definition of *dolus malus* in the civil law.

Consider therefore what is the ground of all this, and particularly of those cases which went on the foundation of notice only; for Lord Forbes was on notice only, and notice too to the agent. The ground of it plainly is this, that the taking of a legal estate after notice of a prior right makes a person a *malâ fide* purchaser, (and not that he is not a purchaser for a valuable consideration in every other respect,) this is a species of fraud, and *dolus malus* itself; for he knew the first purchaser had the clear right of the estate; and, after knowing that, he takes away the right of another person by getting the legal estate. And this exactly agrees with the definition of the civil law of *dolus malus*. Dig. lib. 4. tit. 3. lex 2. *Dolum malum servius ita definit. Machinationem quandum alterius decipiendi causa, cum aliud simulatur, et aliud agitur: labeo autem, posse et sine simulatione id agi, ut quis circumveniat: posse et sine dolo malo aliud agi, aliud simulari; sicuti faciunt, qui per ejusmodi dissimulationem deserviant, et tuentur vel sua vel aliena. Itaque ipse sic definivit, dolum malum esse omnem callidatem, fallaciam, machinationem, ad circumveniendum, fallendum, decepiendum alterum adhibitam. Libeonis definitio vera est.*

Now,

" passed the acts for registering deeds respecting
 " lands in the West, East, and North Ridings of the
 " county

Now, if a person does not stop his hand, but gets the legal estate, when he knew the right in equity was in another, *machinatur ad circumveniendum*; and it is a maxim too in our law, that *fraus et dolus nemini patrocinari debent*.—
 Co. 3 Rep. 78. b.

A maxim in our law that *fraus et dolus nemini patrocinari debent*.

Fraud, or *malâ fides*, therefore, is the true ground on which the court is governed in the cases of notice, and it is a consequence of the decision of the former question that notice to the agent is sufficient; for if the ground is the fraud or *malâ fides* of the party, then it is all one whether by the party himself, or his agent, still it is *machinatio ad circumveniendum*: and the putting a copy of the first articles and settlement into Norton's hands, to take the opinion of counsel in what manner they could be set aside, is a contrivance to circumvent.

If the ground is the fraud, or *malâ fides* of the party, it is all one, whether by the party himself or his agent; still it is *machinatio ad circumveniendum*.

It has been said, if this woman has been imposed on by her husband, she, instead of cheating, has been cheated. But then who ought to suffer? The person intrusting an agent, or a stranger who did not employ him? He certainly who trusts most, ought to suffer most.

He certainly who trusts most, ought to suffer most.

Mrs. Hatt, the third mortgagee in the case in 2 Vern. mentioned before, was imposed on; and so was Moore in the other case reported there clearly imposed on; and yet, if this was to be any excuse, it would make all the cases of notice very precarious; for it seldom happens but the agent has imposed on his principal, and, notwithstanding that,

If the principal's being imposed on by his agent was admitted as an excuse, it would make all the cases of notice very precarious; for it seldom happens but the agent has imposed on his principal.

“ county of York, and in the county of Middlesex.
 “ Upon a similar principle was passed the salutary
 “ and beneficial act of the 17th of his present
 “ Majesty, c. 26. for registering (*generally deno-*
 “ *minated inrolling*) the grants of life annuities.
 “ On the statute of the 29 Car. II. c. 3. the
 “ courts have decided that, as it was made with a
 “ design to prevent, either in marriage, or in any
 “ other treaties, uncertainty, perjury, and con-
 “ trariety of evidence, the cases not liable to these
 “ inconveniencies are not within it. *The courts*
 “ *seem to have favoured a like equitable construc-*
 “ *tion of the statutes for the registration of deeds.*
 “ *Thus, in the case of Le Neve and Le Neve, 1 Vez.*
 “ *64. Lord Hardwicke decreed that, if a deed re-*
 “ *specting lands in any of the registering counties is*
 “ *not registered, and afterwards the same lands are*
 “ *sold, or mortgaged by a deed properly registered,*
 “ *if the person claiming under the second deed has*
 “ *notice of the first deed, the person claiming under*
 “ *the first deed, though it is not registered, shall be*
 “ *preferred to him.* The general doctrine of these
 “ deci-

that, the person trusting ought to suffer for his ill-placed con-
 fidence. Therefore in both respects, as agent and trustee,
 notice to Joseph Norton is notice to the defendant Mary like-
 wise; and also as to the Registry Act, here is a sufficient
 equity in the plaintiff to postpone the second articles and settle-
 ment, notwithstanding these only have been registered. And
 his lordship decreed accordingly.

“ decisions is founded upon principles both just
 “ and equitable, when applied to particular cases;
 “ yet it may be doubted, whether a more rigid
 “ adherence to the letter of these statutes, parti-
 “ cularly that of the 29 *Car.* II. c. 3. would not
 “ have been more beneficial to the public. The
 “ French shewed a much more rigid and pertina-
 “ cious adherence to the letter of their laws
 “ respecting the registration of deeds and wills.
 “ By laws of that kingdom, as ancient as the
 “ 16th century, particularly an ordonnance of
 “ Henry II. of the year 1553, it was ordered,
 “ that all wills and deeds, containing substitutions
 “ of estates, should be registered within a parti-
 “ cular period of time. If they were not re-
 “ gistered within that time, the courts seem to
 “ have doubted whether they were binding even
 “ on the parties in whose favour the substitutions
 “ were made: but it was always settled that the
 “ substitutions were of no force against creditors
 “ or purchasers. Several points of the laws re-
 “ specting substitutions being unsettled, and the
 “ laws respecting them being different in different
 “ parts of the kingdom, they were all reduced
 “ into one law by the celebrated ordonnance of
 “ 1747. That ordonnance was framed by the
 “ Chancellor d’Aguesseau, after taking the senti-
 “ ments of every parliament in the kingdom upon
 “ forty-five different questions proposed to them
 “ upon the subject. The thirty-ninth question is
 “ Whe-

“ Whether a creditor or purchaser, having notice
 “ of the substitution before his contract or pur-
 “ chase, is to be admitted to plead the want of
 “ registration. All the parliaments, except the
 “ parliament of Flanders, agreed that he was ;
 “ that to admit the contrary doctrine would make
 “ it always open to argument whether he had or
 “ had not notice of the substitution: *that this*
 “ *would lead to endless uncertainty, confusion, and*
 “ *perjury: and that it was much better the right*
 “ *of the subject should depend upon certain and*
 “ *fixed principles of law, than upon rules and*
 “ *constructions of equity, which must be arbitrary,*
 “ *and consequently uncertain.* The ordonnance
 “ of August 1747 was framed accordingly. Those
 “ who have commented upon that ordonnance
 “ lay it down as a fixed and undeniable principle
 “ that nothing, not even the most actual and
 “ direct notice, countervails the want of registra-
 “ tion ; so that if a person is a witness, or even a
 “ party to the deed of substitution, still, if it is
 “ not registered, he may safely purchase the pro-
 “ perty substituted, or lend money upon mortgage
 “ of it.”

From the cases cited in the report of Le Neve
 and Le Neve may surely be deduced the most
 forcible arguments of the necessity and utility of
 the statutes for registry, as affording a salutary and
 easy means to escape error and uncertainty, through
 the medium of the correct indexes kept in all the

offices, the inspection of which must produce positive security, where no previous notice can be established. The beneficial effects intended by the legislature have, I fear, been paralyzed by the deviations from their strict letter, which the foregoing animadversion relates; but, even in their relaxed comprehension, their utility will not be denied by those who are acquainted with them practically. It will, perhaps, be asserted that such animadversion is indicative merely of doubt, and applies more immediately to the statute of frauds and perjuries. If it stood without the context, I should agree that no great advantage was obtainable by its statement; but the quotation of the French journal is a very strong implication of the authors' opinion that the laws for registry, *in their literal sense*, are more advantageous to the subject than the system developed by the equitable determinations thereon. Taking however these determinations as the fixed rule for calculation, which is certainly to be recommended, the deductions to be made from them are, *that a person, being a subsequent purchaser or mortgagee for a valuable consideration, whose incumbrance is duly registered, may be defeated in his security by the holder of a first incumbrance not registered, provided it can be proved that such subsequent claimant, or even his attorney or agent, had notice before his advancing his money that such first incumbrance was existing; in con-*

D

tradiction

tradiction to the expressions of the statutes, which say, that "every such first incumbrance shall be
 "adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable
 "consideration, unless a memorial thereof be registered:" *but where a person has no notice of a prior conveyance or incumbrance, and it is not registered, then that the registering the subsequent conveyance or incumbrance, shall prevail against, and supersede the prior one.*

Since the latter decision of Lord *Hardwicke*, a lapse of almost fifty years, I find only two cases relative to registration worth detailing. The first is *Morecock v. Dickins* and others, *on an appeal from the Rolls*, Amb. Rep. p. 678. (f); in the decision

(f) *Morecock v. Dickins* and others.—November 19, 1768.

Upon appeal from the Rolls.

Registration in Middlesex of an equitable mortgage is not presumptive notice of itself to a subsequent legal mortgagee, so as to take from him his legal advantage.

On 16th June 1749, *Henry Fandal* leased a piece of ground and buildings at Wapping, for fifty-one years to the defendant *George Wilson*.

On the 23d February following, *George Wilson* assigns the premises to the plaintiff *Morecock*, for the remainder of the term, to secure 800*l.* and interest.

In 1751, *Morecock* went abroad, and left the mortgage deed in the hands of *Wilson*, having first signed a receipt on the back of it, by which it appeared that *Morecock* had been repaid the principal and interest: and this transaction was stated in the bill

decision upon which the case of *Bedford v. Bacchus* is, for the first time, referred to, as having settled the

bill to have passed at the request of *Wilson*, who apprehended he might want money to carry on trade in *Morecock's* absence; and promised that if he borrowed money thereon, he would repay it, and restore the mortgage to *Morecock*, clear of incumbrances.

In 1755, *Morecock* returned to England, and *Wilson* delivered back the mortgage to him, without having borrowed any money upon it; where it remained till 1760, when he again trusted *Wilson* with the mortgage deed and receipt, with a view, as stated in the bill, to enable *Wilson* to borrow a large sum of money upon security of the premises, out of which *Morecock* was to be paid.

In 1763, *Wilson* mortgaged the premises to *John Atkinson* for 300l. and being pressed by *Atkinson* for payment of the money, prevailed on *Morecock* to sign a writing, by which he agreed to give *Atkinson* priority of his demand.

It did not appear in the cause whether the original lease was ever out of *Wilson's* custody; or whether it was delivered to *Morecock* at the time of the mortgage, and sent back to *Wilson* with the mortgage deed; but it appeared to be in *Wilson's* hands in 1765, for on 24th January 1765, *Wilson* surrendered up the lease, and took a new lease for 71 years.

On the 11th February 1765, *Morecock* and *Wilson* settled their accounts, and there being a balance of 2065l. 5s. due to *Morecock*, it was agreed that the new lease should stand as a security for 800l. and interest at all events; and *Wilson* gave a bond and judgment for the remainder of the balance to be paid by instalments; but in case *Wilson* should neglect to make good any of the payments, it was agreed that *Wilson* should give *Morecock* a security for the same upon the premises.

This deed was registered within a few days afterwards.

the doctrine respecting the efficiency or non-efficiency of the register in conveying notice to the holder

On 6th April 1765, *Wilson* mortgaged the premises to defendant *Dickins* for 800 l. and interest; and delivered to him the lease itself. *Dickins* had no notice of plaintiff's security at the time he took the mortgage, but being afterwards informed of it, on 15th February 1766, gave *Morecock* a notice in writing that he would pay him 1000 l. on the 25th of March following, or as soon after as an assignment of *Wilson's* lease could be prepared, according to the agreement of the 11th of February 1765: and at the same time informed *Morecock* of the mortgage-assignment to himself of the 6th of April 1765.

Wilson soon afterwards becoming bankrupt, nothing was done in consequence of the notice.

Bill by *Morecock*, inter alia, to be paid the 800 l. agreed to be secured on the premises at all events, prior to the Defendant *Dickins's* mortgage.

Bill by *Dickins* to be paid his mortgage money, or to foreclose.

The question respecting this matter was, Whether *Dickins*, though he had not actual notice of *Morecock's* security at the time he took the mortgage, should be affected by a constructive notice, arising from the circumstance of the deed being registered at the time?

It was admitted by the counsel for *Morecock*, that *Dickins* having got the legal interest would be entitled to priority, unless he could be affected by notice. That there was no evidence of actual notice; but it was insisted that the registration was notice of itself. That to give the register act its proper and intended effect, the act of registration ought to operate as notice; and it was compared to the case of judgments; that which is first docketed shall have priority.

On

holder of the legal estate. Although the assertion of Lord Hardwicke, "*that the register act, the 7 Ann.*

" c. 20,

On the other side, it was argued for defendant *Dickins*, that the registry act was made for one single purpose, to give preference to a purchase deed registered, before a prior deed not registered; but the act gives no greater efficacy to deeds which are registered than they had before. And the case of *Bedford v. Bacchus*, 26th November 1730, was cited for that purpose; where a first mortgagee of lands in Middlesex, having registered his mortgage, lent a further sum without actual notice of a second mortgage, which had been registered. Lord King, Chancellor, was of opinion that he ought not to be affected by such constructive notice, but that the rule of equity took place, and the first mortgagee was entitled to be paid his whole money before the second mortgagee.—That in the present case *Dickins* having got the legal interest, was entitled to be paid before a prior equitable incumbrancer, unless he was affected by notice. That here was no actual notice, and the registration was not constructive notice, according to the above determination.

Lord CAMDEN, Chancellor.

Q. Whether registration is presumptive evidence to all mankind?

If this was a new point, it might admit of difficulty; but the determination

Chival v. Nicholls, Stra. Rep. 664.

in *Bedford v. Bacchus* seems to have settled it, and it would be mischievous to disturb it. The act provides for one single case only, that is, to make unregistered deeds void against registered deeds; but there is no provision by the act in a case where all the deeds are registered. And yet it becomes a serious question whether a Court of Equity should not say that, in all cases of registry, which is a public depository for deeds, and to which any person may resort, a subsequent purchaser ought not to

" c. 20, is notice to the parties, and notice to every
 " body," is herein disputed, it is observable that
 Lord Camden declares the authority, but not the
 equity of the decision upon which his decree is
 founded; and the following words attest pretty for-
 cibly his private opinion of that decision, which
 he seems to pursue, *merely as a precedent*, against
 his better judgment. " *It becomes a serious ques-*
 " *tion whether a Court of Equity should not say*
 " *that in all cases of registry, which is a public ce-*
 " *pository for deeds, and to which any person may*
 " *resort, a subsequent purchaser ought not to search*
 " *or be bound by notice of the registry, as he would*
 " *of a decree in equity or judgment at law.*"

There appear grounds for granting relief to
Dickins in this case, foreign to every consideration
 of registry, and founded entirely upon *Morecock's*
 assisting

search, or be bound by notice of the registry, as he would
 of a decree in equity, or judgment at law? It is a point in
 which a great deal of property is concerned, and is a matter of
 consequence. Much property has been settled, and convey-
 ances have proceeded upon the ground of that determination.—
 In the case of *Vandebendy*, in the *House of Lords*, the doctrine
 about dower prevailed, because it had been practised in a
 course of conveyance.—A thousand neglects to search have
 been occasioned by that determination, and therefore I cannot
 take upon me to alter it. If it was a new case I should have
 my doubts; but the point is closed by that determination,
 which has been acquiesced in ever since.

assisting *Wilson* in an attempt to defraud, by permitting the deed or deeds constituting a title to remain in his possession; for the reasonable presumption of any person taking a security, and finding title deeds in the custody of the grantor, must be that the property is unincumbered. I have not been able to learn what arguments were adduced on this case before the Master of the Rolls, from whose judgment the appeal was made; but it is certainly to be regretted that such differences should prevail on a question of so much importance to the landed interest.

This determination, evidently leaning against the opinion of the learned authority whence it proceeds, is somewhat remarkable for its application to the solitary case of *Bedford v. Bacchus*, and not touching in the most distant manner upon any of those more recently decided, and particularly on the one of *Hine v. Dodd*, where the assertion of Lord *Hardwicke*, before alluded to, is contradictory of the last expression delivered by Lord *Camden*. It is almost impossible that this or any other of the decisions on the question of registry could be unknown to the latter; and yet one would suppose a knowledge of them could hardly fail to produce animadversion upon the contrariety of their doctrines.

The last case in the report books, which has any affinity to the subject under discussion, appears to be *Jolland v. Stainbridge*; determined before

the Master of the Rolls so recently as the 31st of July 1797 (g). Vez. jun. vol. 3. p. 478.

The

(g) *Jolland v. Stainbridge*, Rolls, July 14, 18, 21, 31.

A registered conveyance of premises in Middlesex for valuable consideration established against a prior devise not registered, the evidence of notice which ought to amount to actual fraud, not being sufficient.

Edward Jolland, tenant in tail of certain houses in *Half-moon Street*, and *Seven Star Court, Old Street*, in the county of *Middlesex*, under the will of *Robert Long*, dated the 2d of July 1731, by indenture of lease, dated the 20th of October 1785, in consideration of a house having been built on part of the premises by *Daniel Hands*, under articles dated the 5th May 1784, and in consideration of a fine of 20l. and the rents and covenant entered into and reserved, demised the said ground and newly erected house to *Daniel Hands*, his executors, administrators, and assigns, for sixty-one years, under a rent of 10l. a-year, payable to *Edward Jolland*, his heirs and assigns. This lease was registered according to the statute 7 Anne c. 20. upon the 27th of October 1785. By deed poll indorsed upon the lease, and dated the 24th of February 1787. *Hands*, in consideration of 300l. assigned to *William Loveday*, who, upon the 18th of January 1790, in consideration of 300l. assigned to *John Palmer*. Upon the 27th of January 1790, the premises were put up to auction; and *William Stainbridge* was declared the best bidder at 270l. 18s. and paid a deposit of 50l. On the 3d of February 1790, the assignments from *Hands* to *Loveday*, and from *Loveday* to *Palmer*, were registered. By indenture, dated the 9th of February 1790, reciting the sale, *Palmer* assigned to *Stainbridge*; under which assignment he was in possession. That deed was registered on the 27th of February.

After the death of *Edward Jolland*, *Sophia Jolland*, an infant, his only child, brought an ejectment claiming under the will

The caution to be derived from this may probably have a tendency to promote the more frequent

will of *Robert Long* as issue in tail: but that will not having been registered, the plaintiff was nonsuited. She then filed the bill, charging notice to *Hands* previous to the lease, and also to *Stainbridge* previous to his becoming entitled.

The defendant by his answer stated, that he purchased the said lease, which, together with the said several assignments, is in his custody, and which have been all duly registered, at a public sale by auction, on or about the 27th of January 1790, for 270l. 18s. without any notice from any other person of the existence of any claim in any person whatsoever; and he submitted that, as he purchased the premises at a public auction for valuable consideration, without any notice of the existence of the plaintiff's title, or of the said devise or will, when he paid his purchase money, the same is void. He does not know, or believe, and was never informed that, previous to the granting the lease, *Hands* or the person to whom it was granted had any notice; and believes he had no notice or intimation, or reason to believe or suspect that *Robert Long* had made such will, or that *Edward Jolland* was entitled under the will as tenant in tail only, or any notice or intimation to that effect: on the contrary, the defendant believes that he had no such notice or suspicion; since, if he had any such notice or intimation, he would not have taken a building lease: but the defendant positively denies that this defendant, previous to his paying his said consideration money, upon the purchase of the said lease, had any notice whatsoever, or the most distant intimation to that or the like effect: and he submits that, as *Edward Jolland* pretended to be seised in fee, and was in possession at the time of executing the lease, and as the lessee and the mesne assignees paid valuable consideration, as well as this defendant, and all the deeds were registered, and this

defendant

quent registry of wills affecting property in the county of Middlesex; very few of which, proportioned

defendant had no notice, intimation, or suspicion of the plaintiff's alleged title or claim previous to the execution of the assignment and payment of the consideration money, or of the existence of any such title as the complainant set up, and having duly paid the reserved rent, and expended considerable sums in improvements, and as the will of *Robert Long* was not registered, the relief prayed will not be granted.

The evidence of notice was to the following effect :

Brayfield, book-keeper to the defendant *Stainbridge*, deposed, that the wife of the defendant, about the beginning of 1790, told the deponent, in the presence of the defendant, that Mrs. *Jolland* (mother of the plaintiff, and now Mrs. *Colton*) had that day been with the defendant, and desired him not to have any thing to do with the estate, for that it belonged to her daughter, and the person who was about to dispose of it had no right to sell; and the defendant and his wife asked the deponent whether he thought the defendant would be safe in purchasing the estate at an auction; the deponent said he thought the defendant would be safe if he purchased it at an auction.

Elizabeth Hands (widow of *Daniel Hands*) stated the lease to her husband, and that he built a dwelling house, and he and his wife lived in the house; and the deponent from time to time paid the rent on behalf of her husband to *Edward Jolland* for about a year or upwards; after which she paid it to the agent of *Joseph Allen*, to whom *Jolland* had mortgaged it, till the sale to *Stainbridge*. *Hands*, previous to the lease to him and to the building the house, informed the deponent that he and *Branscombe*, a broker, had been to *Dorset's Commons*, and had there read the will of the person under whom *Edward Jolland* claimed the estate; and he and *Branscombe* were well satisfied with the title. About nine years ago, *Hands* was sentenced

portioned to the aggregate number, are registered in exact compliance with the terms of the statute.

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sentenced to be transported to Botany Bay, where he died. A short time before that sentence, *Loveday*, now deceased, out of friendship to, and to secure the estate for the benefit of the deponent, procured an assignment from *Hands*, which was afterwards executed by *Hands* in *Newgate*, and executed for the benefit of the deponent; and *Loveday* never paid any consideration. The deponent delivered the lease to an attorney, for the purpose of having the assignment prepared; and the assignment and the lease were afterwards delivered to the deponent, and continued in her possession for some time. She afterwards borrowed of *Palmer* 17l. 17s. and delivered the assignment and lease as a security; and about four or five months afterwards, the said 17l. 17s. then remaining due to *Palmer*, he prevailed upon the deponent to have the estate sold by auction; and it was sold accordingly at the said house where the deponent lived, and was purchased by *Stainbridge* for 270l. 18s. *Hands* had expended 300l. upon the premises; and some time before the sale *Moorsman* told the deponent he would have given 500l.; but four or five months afterwards, at a meeting between the deponent, *Palmer*, *Stainbridge*, and *Morris*, an attorney, the deponent received 70l., part of the purchase, and all she ever got. A day or two previous to the auction, *Stainbridge* came to the deponent's house, and told her, Mrs. *Colton* (formerly Mrs. *Jolland*) had been with him, and informed him that the title to the said lease of the said estate was not a good one; and therefore she thought it would not be right for him to purchase such estate; and that he told her that, if he had a mind to purchase the said estate, and run the risk, it was nothing to any one. Previous to the auction the deponent went, by *Stainbridge's* desire, with him to the house

The cases I have stated, some of them so different in their essence, have served, instead of repressing

house of *Morris*; when *Palmer* produced the lease and assignment, and *Morris*, reading them, told *Stainbridge* that, if he purchased the estate, he (*Morris*) would indemnify him.

Elizabeth McNeale deposed, that a few days previous to the sale, *Anne Jolland* called to *Stainbridge* as he was passing by the door, and told him she heard he was going to purchase the said estate; and therefore thought proper to inform him that the title thereto was not good; upon which he appeared displeased, and said *poh, poh!* and went away.

This evidence was confirmed by *Samuel Pitt*.

Shipman, an auctioneer, deposed, that he was applied to by *Palmer* in 1789, to sell the estate; but from something that appeared to him, upon reading the deeds, and also from the report that a good title could not be made, he declined being concerned.

Young deposed, that immediately after the sale, he was present at a public house, and read the lease to the parties present, and some doubts arising as to the title, *Palmer* promised to indemnify *Stainbridge*.

Anne Colton, mother of the plaintiff, deposed, that *Edward Jolland* was in 1785 generally reputed owner, as heir in tail under the will of *Robert Long*. She has heard him say several times he was so entitled.

In 1785 *Edward Jolland* shewed *Hands* a copy of the said will; and he was fully apprised and acquainted with the nature and extent of the title; and, in the same year, *Hands* told *Jolland* that he had been with *Mr. Hufsey*, or *Hough*, to *Doctors Commons*, and had seen the said will and was well satisfied with the title.

This

pressing doubts, to distract the mind with uncertainty and confusion; inasmuch that the doctrine
which

This deponent then gave the same account as *M^r Neale* and *Pitt* of her conversation with *Stainbridge*, when he was passing by the house, and said that, the day after the sale, she went to his house, and in the presence of *Oliphant*, told him that a good title could not be made to the said estate, and added that, as her husband was dead, such estate had come to her child; and therefore she requested that he would not have any thing to do with the same: he said he would do as he thought proper.

Oliphant deposed, that to the best of his recollection and belief, no conversation passed between him and *Stainbridge*, or between *Stainbridge* and any other person, in his presence, concerning the estate in question.

Mr. Piggott for the plaintiff.—*Hands*, and all who claim under him, were bound to look to the title of the lessor; and can have no better title than he could give them. The validity and duration of the lease must depend upon his power to grant it; and they who took it were bound to inform themselves of the extent of his power. Every purchaser is bound to look to the title of his vendor; and cannot plead ignorance of that which, had he looked, he would have known. The fact of the vendor's possession cannot justify the vendee in treating with him as tenant in fee simple, without requiring title deeds, abstracts, or any other evidence of his title. Either the purchasers have not looked to the title of the vendor, and have not fulfilled the obligation to inform themselves, but have purchased in the dark, and at their peril, or they cannot be ignorant of the plaintiff's title. They do not allege any attempt to inform themselves, and that the information they sought was withheld; nor do they offer any excuse. No papers to evidence the title were required. Had the purchaser inquired about the title, the vendor must either have forged a title, or have
shewn

which denies the register to be constructive notice, so as to affect the holder of the legal estate, (for the

shewn the will, which would necessarily have discovered the plaintiff's title. If a grantee or devisee in tail, by avoiding to register the deed or will creating the entail, and finding a purchaser, who will take a conveyance in fee from him, and register it, without looking farther or asking a single question about his right to make such conveyance, can divest the unborn issue of their title *per formam doni*, the consequences of such a transaction and so new a mode of conducting a purchase are very extraordinary and important. A tenant for life, in possession, with remainders to *feme covert*s, infants, or persons not *in esse*, may, upon the same principles, and by the same means, effect the same purpose. Can that be the true construction of the *statute*? According to this doctrine, the tenant in tail, or tenant for life in possession, has an interest in omitting to register, and by such omission the former can effect all he could effect by fine and recovery, and the latter, which he cannot effect by any other means. I agree if two persons derive under the same person, the last deed without notice of the first, and registered, shall prevail against the first in date not registered. Here the issue in tail claim, not under the vendor, but by a title paramount under the same instrument which gives him title. If the defendant meant to protect himself under *Loveday* and *Palmer*, he ought to have alleged that he did so, and that they had no notice. He has not done that; and the plaintiff has made ground enough for an inquiry whether they are not men of straw, trustees for *Hands*; and that the defendant was dealing with them knowing that, and that the sale was for the benefit of *Hands* and his family. The assignment from *Hands* to *Loveday* purports, upon the face of it, to be three years before the registration, and to be an absolute assignment of *Hands*'s interest. The assignment to

the cases, if I properly understand them do not go further,) has been interpreted by many into a denial

Palmer was upon the 18th of January 1790; and upon the 27th *Stainbridge* purchased. Both assignments were registered together, subsequent to the purchase, and for the purpose of bolstering up the title *Stainbridge* had then acquired. He cannot put himself into a different situation by any act done subsequent to his purchase, with notice; viz. by getting in the prior assignments, and registering those; which he could not do with his own deed. This is not like *Hine v. Dodd*, 2 Atk. 275. one witness fully contradicted by the answer; upon which ground alone the bill was dismissed. *Le Neve v. Le Neve*, 1 Vez. 64. 3 Atk. 664. Amb. 436. was upon the evidence of a single witness, *Norton* the agent. If this evidence will not do, no evidence will: and there is an end of the equity. It is under the head of fraud that equity relieves. *Sheldon v. Cox*, Amb. 624. is upon the same principle. Parol evidence was admitted in all the cases.

Mr. Lloyd and Mr. Short for the defendant.—It is unfortunate that the Court has departed from the *statute*, by admitting evidence of notice *aliunde*.

It has in fact repealed the *statute*. But the Court will not now extend that, or hold such loose and desultory evidence as this sufficient. If *Hands* was a purchaser without notice, *Stainbridge* may shelter himself under that, though he had notice. *Harrison v. Forth*, Pr. Ch. 51. 1 Eq. Ca. Ab. 331. *Lorwer v. Carleton*, For. 187. 2 Atk. 242. No notice is proved against *Hands*, except by one witness, contradicted by the answer. In the great case of *Le Neve v. Le Neve*, there was no doubt as to the notice, but the question was, whether *Norton* was agent or not? and Lord *Hardwicke* considers all these cases as depending, not so much on notice as fraud; as where the agent buys the estate himself, and registers his

own

denial of its being notice, under any circumstances whatever.

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own deed, having his employer's deed in his pocket upon a trust to register it. In all the cases there is something of recital in the instrument, something beyond parol evidence, something more than what Lord *Hardwicke* calls suspicion of notice.

July 31st. *Master of the Rolls*.—In this cause the value of the property is not such as to make an issue desirable; and if I am to decide it, I am of opinion the bill must be dismissed; for it does not appear to me, that the plaintiff has made out a case to entitle her to the relief prayed. There are a great many suspicious circumstances in this case. One thing is clear; the parties who sold to *Stainbridge*, if they sold on their own account, have sold in violation of the trust reposed in them. Nothing is more clear, than that *Loveday* and *Palmer*, the two persons supposed to purchase under *Hands*, were mere trustees for his family; therefore, with regard to them, I think the objection of Mr. Piggott to their being interposed as any bar to their relief, is well founded. Their registry was with a view to this transaction; therefore I desire to be understood to lay the conveyances to them totally out of the case. Then, laying out of the case the two intermediate conveyances, the question is, How far there was notice, such as this court holds sufficient against a purchaser for valuable consideration, either to *Hands* or to *Stainbridge* himself? It is very clear that *Hands*, who was convicted of receiving stolen goods, and was transported, assigned this over in consequence of his situation. The witness Mrs. *Hands* comes in a very extraordinary way to set aside a conveyance, as she says, made in trust for her. The first question is, Whether there is evidence sufficient that *Hands* was perfectly aware the lessor had only a limited interest? The principal witness is *Hands's* wife. It is very extraordinary that she should come, who paid
rent

I am not aware that arguments have, at any time since the passing of the 4th and 5th William
and

rent for these premises under her husband; and admits that he having laid out this money, assigned first to *Loveday*, but as trustee for her; and then they were assigned to *Palmer*, as a security for a very trifling sum of money, only 17l. 17s.; and she states broadly, that her husband's conveyance to them was only in trust for her; and she states broadly knowledge in her husband of the defect of title; and the way she makes it out is, that she says *Hands* went to *Doctors Commons*, and there saw the will, and was perfectly satisfied with the title. It is almost inconceivable; for if *Jolland* was tenant in tail, it was the easiest thing that could be, for him to make a good title. It is almost incredible that *Hands* should take a lease for 61 years, and lay out money, and see that *Jolland* had a very good title, if he chose to make it so. Two other witnesses say *Hands* had looked at the will under which *Jolland* claimed these premises: but none of them go to the will of *Long*, which was made in 1731; and which created this entail; and I must suppose that, if *Hands* did go to *Doctors Commons*, and saw any will, it was another will. It is impossible not to see that Mrs. *Hands* gives this evidence from spite. Whatever the rule may be as to the registration of deeds, it is impossible to let such evidence as this be brought to prove notice upon a purchaser for valuable consideration. I must admit now that the registry is not conclusive evidence; but it is equally clear that it must be satisfactorily proved that the person who registers the subsequent deed must have known exactly the situation of the persons having the prior deed; and, knowing that, registered, in order to defraud them of that title he knew at the time was in them. I am to suppose, upon this loose evidence, that *Hands* went to *Doctors Commons*, saw that it was an entailed estate, upon which the man could make him

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and Mary, c. 20., and 6th and 7th William and Mary, c. 14., been urged against the general necessity

a good title, and that he chose to commit this fraud upon the issue in tail, without getting a recovery suffered, and a good title thereby made to him.

Therefore there is no sufficient evidence of any knowledge in *Hands* of any defect of his lessor's title.

If notice was proved against *Hands*, I will not say there is not sufficient ground for an issue, at least as to the notice upon *Stainbridge*. I do not like his manner of swearing himself a purchaser for valuable consideration, without notice. It is clear, whether he had notice of the plaintiff's title or not, he had some intimation of the claim of the plaintiff. He ought to have declared that in his answer. His sheltering himself under those general words makes me imagine he thought it sufficient not to have notice at the time of the auction. I agree it is not sufficient to prove notice to assert that some other person claims a title; yet all the evidence given here is of that sort. The plaintiff's mother was guilty of great neglect in merely telling the defendant he would purchase at his peril. She never attended the auction, and never registered this will, of which she says *Stainbridge* had notice. That would have been a much better way. Then the person purchasing would have had notice, not only of the claim, but what sort of claim it was. I very much doubt whether that general claim is sufficient to affect a purchaser, with notice of a deed, of which he does not appear to have had knowledge. If the premises would bear it, I should be inclined to grant an issue; but, as it stands, I am of opinion the bill must be dismissed; but without costs. The plaintiff is an infant; and may not be bound by the decree. *Stainbridge* has not made a very honest defence. The grounds upon which I dismiss the bill are, first, that there is not sufficient proof of notice to *Hands*, nor secondly, to *Stainbridge*.

cessity of searching for judgments in the courts of record; and I conceive the substance of the several registering acts, and the acts to enforce the doggetting of judgments perfectly analogous in their institution and use, and that they supply precisely the same reasons for adopting this cautionary step.

To prove, at least, that the same conclusion may be drawn from one as from the other, I shall again trespass upon the text of Messrs. Hargrave and Butler, who say, “ the protection afforded by
 “ terms of years against what are called mesne
 “ incumbrances, makes it safe, in some cases, to
 “ dispense with *a search for judgments*: but this
 “ is never prudent where there is reason to ap-
 “ prehend notice of them will be proved, or will
 “ be attempted to be proved on the party, or any
 “ of his agents in the business.—Besides no term,
 “ or other outstanding estate should be relied on,
 “ unless proof can be obtained easily, and at a
 “ small expence, of the instruments and acts in
 “ law which must be proved to establish the crea-
 “ tion and deduction of the term. It should also
 “ be ascertained that its situation is such as enables
 “ the

If the parties wish to have it tried, I would not discourage an application: but I am afraid it is a hopeless case.

I regret that the statute has been broken in upon by parol evidence, and am very glad to find Lord Hardwicke in Hine and Dodd says, that nothing short of actual fraud will do.

“ the party entitled to it to avail himself of it in
 “ ejectment. This does not always appear suf-
 “ ficiently attended to. Generally speaking, it
 “ is true the possession of the cestuy que trust is
 “ the possession of the trustee: but it is equally
 “ true that the extent and application of this rule
 “ are by no means settled. Great care, therefore,
 “ should be taken in these cases, where the out-
 “ standing estate is relied on, as a protection
 “ against mesne incumbrances, that the possession
 “ of the actual terre-tenants has not been such as
 “ to deprive the persons in whom the outstand-
 “ ing estate or interest is vested of their entry.”
 Having proceeded to borrow the expressions of
 the judicious authors thus far, I am tempted to
 proceed to the end of the paragraph; where it
 is observed that “ in all cases of this description,
 “ it is infinitely better to err by an excess of care,
 “ than to trust any thing to hazard.”

In the instance of accepting what are called
 building leases, to which a part of the last case
 applies, neglects to search the register have been
 more conducive to the danger of individuals, than
 those of any other description; and it appears to
 me a most absurd distinction actuating the public
 mind, which recommends this cautionary measure,
 when money is paid on the moment, as the con-
 sideration of grant, and yet to forego it, when an
 equal sum is to be, in future, expended on im-
 provements of the property taken. This how-
 ever happens daily. Indeed perfect security can
 hardly,

hardly, in any instance, be attained when this easy and salutary means of escaping error is not pursued.—A multiplication of original deeds, in which no manner of difference is made either by execution or indorsement; obtaining duplicates of leases from lessors, under pretence of the original one being lost or destroyed, when it has, in fact, been incumbered and delivered to a mortgagee, and other circumstances of a surreptitious nature, will sometimes defeat all calculations of security founded upon any other basis.

With a knowledge of the reports thus detailed, and a trifling attention to the abstract of the statute given in the second part of this volume, no person of even moderate caution can possibly incur, in a register county, the dangers incident to every other: and, where title deeds cannot be transferred with the sale or incumbrance of an estate, which frequently happens, I am assured the advantages of registration must be too obvious to require comment.

But as erroneous opinions generally arise from want of either assiduity or leisure to collate the acts of parliament, and the equitable decisions thereon, the principal object of this address is to supply an introduction and arrangement of the latter, and facilitate fair investigation. Having, as I conceive, effected that purpose, I shall dismiss the subject, with merely observing, in conclusion, that the cases of *Bedford v. Backhouse*, and

Wrightson v. Hudson, although but recently determined when Lord Hardwicke made his decree on Hine and Dodd, and Le Neve and Le Neve, are not even alluded to in either; nay, indeed, it is almost certain they were not known on the hearing of Hine v. Dodd, as Lord Hardwicke observes thereon, that *two* cases had been previously determined on registry, alluding to Lord *Forbes v. Nelson*, and *Blades v. Blades*, which are set out pretty much at large in the arguments on Le Neve v. Le Neve.

This has somewhat excited my surprise, but I have been willing to think that Lord Hardwicke did not choose to accept them as perfect authorities. It seems, however, much more unaccountable that Lord *Camden*, in *Morecock v. Dickins*, should suffer both the decisions of Lord *Hardwicke* to pass unobserved; and particularly the pointed assertion of the latter, in *Hine and Dodd*, on the effectiveness of the register as notice.

I shall now proceed upon another objection urged against the principle of registry, derived from an opinion that the intelligence, or notice, prescribed by the statutes to be divulged in a memorial, is not merely specious and illusive, but fraught with considerable danger to purchasers and mortgagees. The information enjoined by the legislature to be recorded in every such memorial, referring to any deed, conveyance, or will, is, “ the day of the month, and the year when such
“ deed,



“ deed, conveyance, or will bears date, and the
 “ names and additions of all the parties to such
 “ deed, or conveyance, and of the devisor, or
 “ testatrix of such will, and of all the witnesses to
 “ such deed, conveyance, or will, and the places of
 “ their abode ; and the honors, manors, lands,
 “ tenements, and hereditaments contained in such
 “ deed, conveyance, or will ; and the names of all
 “ the parishes, townships, hamlets, precincts, or
 “ extraparochial places within the said county
 “ where any such honors, manors, lands, tene-
 “ ments, or hereditaments are lying or being,
 “ that are given, granted, conveyed, devised, or
 “ any ways affected or charged by any such deed,
 “ conveyance, or will, in such manner as the same
 “ are expressed or mentioned in such deed, con-
 “ veyance, or will, or to the same effect.”

Hence it is observable no actual necessity arises
 to describe *the nature of the deed, its consideration,*
or uses ; and I am ready to confess that, in many
 instances, very considerable trouble might be
 avoided, if a more certain and complete intelli-
 gence had been enforced by the legislature ; but
 it remains to be proved that any *dangerous* con-
 sequences can result from the omission, where even
 the most ordinary caution is practised.

Sir Matthew Hale, in a pamphlet published a
 few years before the earliest of the registering acts
 took place, (1694,) and intitled “ *A Treatise shew-*
 “ *ing how useful, safe, reasonable, and beneficial*

“ *the inrolling and registering of all Conveyances*
 “ *of Land may be to the Inhabitants of this King-*
 “ *dom,*” after stating reasons for the measure, much
 to the same effect as those contained in the pre-
 ambles to the statutes, enumerates the parts of
 deeds necessary, in his judgment, to be disclosed
 to the public eye, in the words following: “ There
 “ must be enrolled, at least, so much of the deed,
 “ or evidence, that concerns, first, *parties*, grantor
 “ and grantee; secondly, *the things granted*;
 “ thirdly, *the estate granted*; fourthly, *all those*
 “ *parts of the deed, or evidence, that have any in-*
 “ *fluence upon the estate, as rent reserved, condi-*
 “ *tions, powers of revocation, of alteration, of*
 “ *leasing, the trusts, &c. and those other things*
 “ *which have an influence upon the estate:* and
 “ without all this done and truly done, the pur-
 “ chaaser, or lender, is as much in the dark as be-
 “ fore, and cheated under the credit of a public
 “ office to prevent it.” This stricture, no doubt,
 challenges consideration and respect, as uttered by
 a very great authority; and, *at the present day*,
 more censure originates from a perusal of such
 reflections, than from practical observation: for
 although the statutes are mandatory only as to cer-
 tain descriptions of things, without which no me-
 morial can be accepted for registry, yet as many
 further descriptions may be, and generally are in-
 troduced, as even the text of Sir Matthew Hale
 would recommend, (except in the registry of deeds
 involving family concerns, and settlements on mar-
 riage,)

riage,) upon the following plain and unequivocal principle. The purchaser or mortgagee of an estate is constantly in the habit of employing his own solicitor to investigate the title of the vendor, or mortgagor, and prepare all necessary documents, amongst which is the memorial; therefore it remains optional with him, and with him only, whether to express the nature of the deed, its consideration, conditions, &c. or not: nothing is left to the delicacy of the party disposing of his interest. Now I can manifest to my readers that, amongst the transactions recorded in the Middlesex office, upon an average, not more than one memorial in every hundred is composed of those facts, *only*, which by the statutes must of necessity be introduced to procure registration. Hardly a purchase is entered on the books without the memorial so expressing it, though frequently the consideration, or sum paid, (which I do not apprehend to be material,) is omitted; and mortgages are very rarely registered where the true description of the nature of the deed and its value are not introduced. Motives of fairness and candour actuate this conduct in the majority of persons registering deeds, who are habituated to the most liberal part of the profession, conveyancing: and as it is evident to the rest that a material degree of odium and suspicion attaches upon every transaction recorded in the precise and contracted terms which the law imposes, and beyond which the jealousy of individuals to publish their necessities would

would not perhaps admit compulsion, yet the practice of all descriptions of persons, at the present period, (with the most minute exception,) is far different from what a mere commentator on the act of parliament, or one who has not the opportunity of real observation on its effects, may conceive. I conclude Sir William Blackstone's remark to have been principally derived from a perusal of this tract of Lord Chief Justice Hale, and an acquaintance with the cases before referred to; for if any circumstances of a serious nature had struck his attention, they would undoubtedly have received a reprobation more pointed and direct. I have extracted from the journals of the Lords and Commons, a narrative of the proceedings on the introduction of the Middlesex act (*b*), and

(*b*) This act originated in the House of Lords, as appears by the following statement:

Die Sabbati, 5^o Martii 1708.

Upon reading the petition of the justices of the peace and grand jury of the county of Middlesex, assembled at the general sessions of the peace, held for the said county at Hicks's Hall, in St. John Street, on the 28th day of February 1708, praying leave to bring in a bill for the public registering of all deeds, conveyances, wills, and other incumbrances that shall be made of, or may affect, any manors, lands, tenements, or hereditaments within the said county of Middlesex, after the day of 1709, whereby purchasers may be encouraged to lay out their money to their better satisfaction, and more certain security: it is ordered by the Lords Spiritual and Temporal, in parliament assembled, that the judges do forthwith prepare

and drawn such conclusions therefrom as will, I
trust, appear founded in reason, and at the same
time

prepare and bring in a bill according to the prayer of the said
petition.

Die Sabbati, 12^o Martii 1708.

The judges, pursuant to order, delivered a bill concerning the
registering of deeds and wills in the county of Middlesex:
Which bill was proceeded upon on the 14, 17, 19, 24, 28, 29,
and 30 March; 2, 4, and 5, April, on the latter of which
days it passed the House of Lords; and on Tuesday the 5th
April 1709, a message was sent from the Lords to the Com-
mons by Mr. *Hiccocks* and Mr. *Meller*, in the terms following:
Mr. Speaker, the Lords have passed a bill intituled *An Act for
the public registering of Deeds, Conveyances, and Wills, and other
Incumbrances, which shall be made of, or that may affect any
Honors, Manors, Lands, Tenements, or Hereditaments, within the
County of Middlesex, after the 29th Day of September 1709*; to
which the Lords desire the concurrence of the House.

Friday, 8th April. Ordered that the engrossed bill from the
Lords, intituled as above, be read the first time to morrow, at
twelve o'clock.

Saturday, 9th April. An engrossed bill from the Lords,
intituled as above, was, according to order, read the *first*
time.

Resolved that the bill be read a second time.

Ordered that the bill be read a second time upon Wednesday
morning next, in a *full* house.

Ordered that the bill be printed.

Wednesday, 13th April. Ordered that the engrossed bill
from the Lords, intituled as above, be read a second time to
morrow, at twelve o'clock.

Thursday, 14th April. An engrossed bill from the Lords,
intituled as above, was, according to order, read a *second*
time.

Resolved

time operate a diminution of the censure sustained by the Legislature, from apprehension that the system

Resolved that the bill be committed to Mr. *Barker*, Mr. *Austen*, Mr. *Newville*, Mr. *Churchill*, Sir *John Bennett*, Sir *John Hawles*, Colonel *Stanley*, Mr. *Page*, Sir *Francis Masbham*, Sir *Roger Hill*, Mr. *Plumptree*, Mr. *Hillersden*, Sir *William Strickland*, Mr. *Cecill*, Sir *Thomas Webster*, Mr. *Vernon*, Sir *William Daines*, Mr. *Hutchinson*, Mr. *Monckton*, Sir *William Hufiler*, Mr. *Bridges*, Lord *William Powlett*, Mr. *Serjeant Girdler*, Mr. *Cox*, Mr. *Guidott*, Mr. *Cholmley*, Mr. *Heysham*, Mr. *Richmond*, Mr. *Duncomb*, Mr. *Poultney*, Mr. *Clavell*, Mr. *Peyton*, Mr. *Solicitor General*, Sir *William Whitlocke*, Sir *Robert Marshall*, Sir *Thomas Travell*, Mr. *Hampden*, Mr. *Annesley*, Mr. *Onslow*, Sir *William Withers*, Mr. *Strickland*, Mr. *Webb*, Mr. *Skippon*, Mr. *Wynn*, Mr. *Chace*, Mr. *Woollaston*, and all that serve for North Britain, London, Surry, Berks, and Bucks.—To meet this afternoon, at five o'clock, in the Speaker's chamber.

Friday, 15th April. Sir *William Hufiler* reported from the committee that they had gone through the bill, and made some amendments thereunto, which they had directed him to report when the house was pleased to receive the same.

Ordered that the report be received to-morrow morning.

A petition of *Basill Hern*, *John Suffield*, *John Highlord*, *Nathaniel Barnardiston*, *William Lamb*, *William Brydges*, *John Dawling*, *Daniel Bland*, and *Edward Bulstrode*, on behalf of themselves, and the rest of the incorporated clerks of inrolment in the High Court of Chancery, was presented to the House, and read; setting forth that Queen Elizabeth did, by letters patent, dated at Westminster the 18th of November, in the 16th year of her reign, incorporate the six clerks, and the three clerks of the petty bag of the High Court of Chancery, and their successors, clerks of inrolment in the said Court for ever: That in the bill from the Lords now depending in this House,

system of registry is productive of danger, rather than utility. Two very material facts are evidenced by

House, for public registering of deeds, conveyances, and wills, and other incumbrances that may affect any honors, manors, lands, tenements, or hereditaments, within the county of Middlesex, after the 29th day of September 1709, there is a clause whereby the sworn clerk to execute the office of inrolment in Chancery for *Middlesex* is made one of the registers of the said intended registry; by means whereof the petitioners do apprehend that their deputy will be made in his own right, to the utter exclusion of the petitioners from any benefit in the said office; and praying to be heard by counsel at the bar of the House, what they have to object against the said clause.

And a motion being made, and the question being put, that the petitioners be heard, according to the prayer of the petition; the House divided—For the question 76, against the question 57. So it was resolved in the affirmative.—And the House being informed that the committee to whom the said bill was committed had met, and gone through the bill, and directed the same to be reported to the House,

Ordered that the report be received to-morrow morning; and that the petitioners be then heard by their counsel, if they think fit.

A petition of *Richard Owen*, clerk of the effoins in the Court of Common Pleas, at Westminster, was presented to the House, and read; setting forth that by an act 4^o & 5^o *Willielmi & Mariæ*, for the better discovery of judgments in the Courts of Queen's Bench, Common Pleas, and Exchequer, at Westminster, it is enacted that the petitioner, in the said Court of Common Pleas, and the respective officers therein mentioned, in the other courts, shall, under the penalty of one hundred pounds, keep an alphabetical docket, or register of all judgments recovered in the said Courts, to be searched by

by this narrative; first, That the judges, who prepared the bill, and the committee of the House of Commons

all persons, paying for each term 4d., and no more. That the bill now depending for registering all deeds, &c. directs that all such judgments shall be registered in another office to be created for that, and no other purposes. That the docket kept by the petitioner and the other officers, is altogether as effectual for the security of purchasers, as this new office can be; and so not only increase the charge, by requiring an entry in two offices, but take away the only recompence the petitioner has for his labor in keeping the said register for thirty years past: and praying to be heard by counsel against that part of the bill which relates to the registering of judgments.

Ordered that the petitioner be heard by his counsel (if he think fit) at the bar of the House, to-morrow morning.

A petition of *Luke Phillips*, gentleman, one of the two sworn clerks to execute the office of the enrolment in the High Court of Chancery, was presented to the House, and read, setting forth that by a particular clause in a bill (*stating the title*) the petitioner apprehends he will be much injured, in regard the whole registering is thereby fixed in the other clerk, solely; and praying to be heard by counsel, touching the said clause.

Ordered that the petitioner be heard by his counsel at the bar of this House (if he think fit) to-morrow morning.

Ordered that the petitioners be heard only by one counsel upon each petition.

Saturday, 16th April. Mr. *Barker*, according to order, reported from the committee, to whom the engrossed bill from the Lords (*stating the title*) was committed, that the committee had made one amendment to the bill, which they had directed him to report to the House: and he read the same in his place; and afterwards delivered the bill in at the clerk's table.

And

Commons appointed to investigate its contents,
and which was in a great degree constituted of the
most

And the counsel attending for the several petitioners, in relation to the bill, were called in ; and the several petitions were read, and the counsel were heard thereupon : and also the counsel for Mr. Jones, one of the clerks of the inrolment office in Chancery. And the counsel being withdrawn, the amendment made by the committee was read, and is as follows : Pr. 1. L. 2. after " hereditaments " insert " such."

The said amendment, being read a second time; was upon the question put thereupon, agreed unto by the House.

Another amendment was proposed to be made to the bill, Pr. 2. L. 20. to . . . out the word " sworn " in order to bring in other amendments, on behalf of the nine inrolment clerks.

And the question being put that the word " sworn " stand part of the bill, it was resolved in the affirmative.

Another amendment was proposed to be made to the bill, to leave out the word " clerk " in order to make it " clerks," that the other inrolment clerk might be concerned also.

And the question being put that the word " clerk " stand part of the bill, the House divided—For the question 49. against the question 33. So it was resolved in the affirmative.

Another amendment was proposed to be made to the bill, Pr. 7. L. 11., to leave out the first " the " and after the second " the " to insert " concealment or suppression, or ". And the same was upon the question put thereupon agreed unto by the House.

Another amendment was proposed to be made to the bill Pr: * L: * after * to insert " Four-pence whereof out of each " entry of every memorial of the judgments in the Common " Pleas to be paid and accounted for to the clerk of the effoins " of the said court by the register or master." And the ques-
tion

most consummate lawyers of the age, could not be ignorant of the arguments used by Sir Matthew Hale ;

tion being put that the House do agree to the said amendment, it passed in the negative.

Ordered that the bill be read the third time upon Monday next at twelve o'clock.

Monday, 18th April. Ordered that the bill be read the third time to-morrow morning.

Tuesday, 19th April. An engrossed bill from the Lords, intituled *An Act, &c.* was, according to order, read the third time.

An engrossed clause was offered, as a rider, to be added to the bill, that “ *in case of concealment of any will, or devise, any purchaser shall not be disturbed, or defeated, unless the same be actually registered within five years after the death of the deviser or testatrix.* ” And the same was twice read with a blank, which was filled up, and then the clause was read the third time ; and, upon the question put thereupon, agreed unto by the House to be made part of the bill. Another clause was offered, as a rider, to be added to the bill ; that “ *there being two sworn clerks, and but one named to be register for the office intended to be erected ; that after the charges incident to the execution of the said office shall be borne, the clear profits arising by registering memorials shall be divided between them.* ” And the question being put that the clause be brought up, the House divided—For the question 34, against the question 52. So it passed in the negative.

Another engrossed clause was offered, as a rider, to be added to the bill, that “ *no member of parliament shall be capable of being register, or any register be capable of being chosen a member to serve in parliament.* ” And the same was read three times, and, upon the question being put thereupon, agreed unto by the House to be made part of the bill.

Resolved that the bill, with the amendments, do pass.

Ordered

Hale: and secondly, that only one amendment was offered by such committee, viz. the addition of a solitary monosyllable. The effects of the statutes for registry in the West and East Ridings of the county of York were then easily to be ascertained, and if any imperfection or deficiency, in point of form or extent, had appeared in those, it is extremely probable that they would have been obviated in the one then proposed.

The emendations and additions effected by the Commons, after the bill passed the committee, are very few and insignificant; and not in the least tending to enforce greater notoriety of transactions on record than when it was first communicated from the Upper House.

That the utility of a more copious disclosure upon the register books than the bill directed, was not evident to the legislature, I by no means attempt to insinuate: on the contrary, I incline to think the committee must have been conscious that the directions of the bill did not extend, in this respect,

Ordered that Mr. Barker do carry the bill to the Lords, and acquaint them that this House hath agreed to the same, with some amendments; to which amendments they desire their Lordships' concurrence.

Wednesday, 20th April. A message from the lords by Sir Robert Legard and Mr. Gery.

Mr. Speaker.—The Lords have agreed to the amendments made by this House, to the bill intituled *An Act for the public registering of Deeds, &c.*

spect, so far as they successfully might. But the penetrating man will readily conceive certain difficulties the proposers might have to combat, in attempting to proceed beyond the limits complained of: the principal of which would be the strenuous opposition of the landed interest to the passing any compulsory law, embracing a greater extent than those now in existence. Expence and a share of inconveniency, however minute, are evidently produced by the establishment of registers; and mankind in general, claiming a right to appreciate their own care and discrimination, are too apt to conceive themselves fully competent to avoid error, without the assistance of any extrinsic aid. These considerations, and a disinclination to expose pecuniary difficulties, are ever likely to excite strong discountenance in the majority of landholders to an extension of the registering laws, even upon the principle of those now subsisting; which indeed has been instanced in the rejection of many applications to parliament, to create registers in different counties, since the 8th of Geo. II. the statute for the North Riding of Yorkshire, and the last enacted.

As the legislatures, therefore, before whom the statutes in question were passed, knew the impossibility of repelling the objections arising from any necessity to publish individual embarrassments, (which would have been effected by an enforcement of more full explanation respecting the description
and

and consideration of every deed, a memorial whereof was to be registered,) they may be supposed to have conceded their primary intention, to quiet the public mind. Material repugnance would, I conceive, be felt by parties executing marriage settlements, if an open avowal of the uses and appropriations was rendered indispensable: and what sensations would a parent, on the moment of executing a deed of gift, or appointment to one child, in preference to another, experience, under the necessity of communicating, through the medium of a public office, the full extent of the transaction to every inquisitive eye?

I cannot, having these circumstances in view, wholly approve the suggestions of Sir Matthew Hale before stated, although I admit the inference, in conclusion, to be such as an enlightened and liberal mind, not having practical experience to assist its investigations, would naturally adopt.

Admitting, for argument's sake, that the precise terms dictated by the registering acts, and none other, were allowed to be introduced in memorials, (which, as I have before observed, is by no means the practice,) it might, even then, be successfully contended, that although inconvenience was sustained from the omission of a more direct and ingenuous communication of facts, yet, under the exercise of prudential measures, danger could not be incurred. For example, I will suppose an intended purchaser or mortgagee, not having re-

liance entirely on the assertion of the landholder and proposed grantor, applies to the registry to be informed whether any previous incumbrance or charge has been created on the property he is about to take, and he discovers a deed from the landholder to another person, duly registered, the description of which is not definable by the memorial, because it contains no farther intelligence than the acts of parliament enforce. I then propose to ask whether it is not reasonable to apprehend that the purchaser or mortgagee will immediately interrogate the landholder on the subject of this undefined incumbrance? Most certainly he will; and satisfaction may generally be obtained from an inquiry no further extended: I do not mean from the mere assertion of the incumbrancer, but either from a counterpart or duplicate of the deed registered, or from the corroborative information of the party in whose favor the instrument in question is made. If, by the intelligence derived from these sources, all circumstances are not satisfactorily developed, a purchaser or mortgagee must be mad to pursue his negotiation. The registry, *in its most limited extent*, undoubtedly supplies a beacon to warn against fraud, and guide even the ordinarily cautious to security: but under the *more extended communications which the prevailing practice of preparing memorials affords*, (a deviation from which constantly excites suspicion,) it will be almost needless for me to observe, addressing myself, as I do, to those who

5*

have,

have, at one time or other, experienced its beneficial effects, that both satisfaction and direct information are acquired. The declared purpose of the registering statutes is the prevention of fraud by secret conveyances; no deduction is to be made from any part of their text, that the minutiae of titles are to be explained, or that a purchaser or mortgagee may acquire perfect information by their substantive assistance. I mention this only because I am sensible many persons conceive the registry to be a conservatory of intelligence whence titles may be effectually framed or depreciated! Thus having stated the reasons probably influencing the legislature, in passing these acts, not to press for further publicity of transactions within the counties to which they refer; and having not only shewn the present practice of entering memorials, but, as I think, evinced the impossibility of *danger* being incurred by an opposite conduct, (though *inconvenience* and *suspicion* frequently may,) I shall dismiss my subject with one more observation; namely, that general opinions are seldom more correct than when they involve a consideration of pecuniary advantage and security: and when a comparison is attempted to be made between the salutary and dangerous tendency of the registering statutes, some attention may be due to the statement of an incontestible fact, viz. that purchasers will pay larger sums, and mortgagees frequently advance money at one per cent. lower rate of interest, on

property in the registering counties than in others : whence it seems obvious, that practical and positive advantages accrue to the community by their operation.

The succeeding sheets will be occupied by an attempt to correct misconceptions on more immaterial points than those before mentioned, and to give a few plain directions for the ready attainment of such benefits as seem to have been proposed by the legislature. In this attempt are also implicated certain precedents or forms for preparing memorials ; which are rendered equally useful for the ridings of the county of York, as for the county of Middlesex.

C H A P. II.

Abstract of the Act of Parliament for registering Deeds, and other Conveyances of Lands and Tenements in the County of Middlesex; with Notes of Observation thereon.

THE statute of the 7th of Queen Ann. ch. 20. for the public registering of deeds, conveyances, and wills, and other incumbrances respecting any honors, manors, lands, tenements, or hereditaments within the county of Middlesex, after the 29th day of September 1709, recites, that, by the different and secret ways of conveying lands, tenements, and hereditaments, such as were ill-disposed had it in their power to commit [frauds (a), and frequently did

(a) The first registering act passed in this kingdom was 2, 3 Ann. ch. 4. for the West Riding of the county of York; which differs in no essential points from the Middlesex act, except that it has no direction on the subject of registering judgments, statutes, and recognizances, or of discharging mortgages by certificate. These omissions appear to have been shortly after noticed, as by the 5th Ann. ch. 18. it is enacted, that no judgments, &c. shall bind lands in the said West Riding until the same are registered; and by this latter act power is given to discharge such judgments, &c. and mortgages, by certificate, in much the same way as in the Middlesex one; only with this peculiarity that the defendants, in judgments, cog-

did so, by means whereof several persons who, through many years industry in their trades and employments, and by great frugality, had been enabled to purchase lands, or to lend money on land security, were undone in their purchases and mortgages by prior and secret conveyances and fraudulent incumbrances; and, not only themselves, but their families thereby utterly ruined. And it enacts, that to remedy the same, a memorial of all deeds and

nizors, in recognizances, and mortgagors, in mortgages, are required to subscribe the certificates of discharge, as well as the plaintiffs, cognizees, and mortgagees; which certainly must be conceived superfluous. In this last act, and in the register acts for the East and North Ridings of York, 10 Ann. c. 18., and 8 Geo. II. c. 6. sect. 22., a power is also granted to enrol bargains and sales with the several registers of the three Ridings, and the same are ordered to have as full effect as those enrolled in the courts of record at Westminster: an authority which the Middlesex act does not create.

Although the framers of this statute might deem it impossible for any doubts or questions to arise upon the preamble and first enacting clause, yet it is certain that controversies for priority amongst purchasers and mortgagees have been argued, and decisions of a contradictory tenor have been obtained, upon a point which the written law seems to have peremptorily settled, viz. that the *positive registering* of an antecedent incumbrance is indispensably requisite before the title of a subsequent purchaser or mortgagee for valuable consideration can be defeated or even interrupted! Some hints on what has been termed the *equity of notice*, in contradistinction to the absolute law on the subject, are submitted in the prefatory part of this volume, with cases analogous to the question.

and conveyances which, from and after the 29th day of September in the year of our Lord 1709, shall be made and executed, and of all wills and devises in writing made or to be made and published, where the devisor or testatrix shall die after the said 29th day of September, of or concerning and whereby any honors, manors, lands, tenements, or herditaments in the said county may be any ways affected in law or equity, may be registered as thereafter directed: and that every such deed or conveyance that shall, at any time after the said 29th day of September, be made and executed, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial thereof be registered, as by this act is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim: and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered at such times and in such manner as is in the said act directed. And it enacts, that all and every memorials so to be registered shall be put into writing upon vellum or parchment, and brought to the office appointed for registering; and, in case of deeds and conveyances, shall be under the hand and seal of some or one of the grantors, or some or one of the grantees, his or their heirs, executors,

executors, or administrators, guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of such deed or conveyance (b); which witness shall, upon his oath, before

(b) If a memorial is executed by any party to a deed, resident in town, whether it be *grantor* or *grantee*, (for it will be wholly immaterial which,) and it proves convenient to the witness to attend at the registering office, the oath of such execution is administered *verbally*, in the following terms: " You swear that you saw this memorial signed and sealed, " and the deed to which it refers duly executed by the party " (or parties) thereto whose execution you have attested: " and it is not necessary, in such case, to affix an affidavit stamp, nor any other, to the parchment on which such memorial is written. But if the memorial is necessarily executed by all parties in the country, and *there* sworn, the affidavit must be engrossed on the proper stamp, and may be either written under, or annexed to the memorial.—Its form will be as in Appendix, Precedent No. 42. and must be on parchment. It being often found more convenient to obtain the registry of an instrument by a *representative of a deceased party* under some one of the above designations, viz. of *heir, executor, administrator, guardian, or trustee*, than by any of the *survivors*, who, if they are grantors, will perhaps hesitate to perform what justice and equity demand; and as the above direction does not convey a very distinct idea of the manner in which the registry by such representative is to be effected, it may be useful to premise, that the instrument to be registered, notwithstanding it is already sufficiently executed for general legal purposes, must, in addition, be sealed and delivered by the person requiring the registry, as if he was a party in his own right; and such person must also sign and seal a memorial, which will be varied from the usual form, where it refers to witnesses, as in Appendix, Precedent No. 31.

An

before one of the registers or masters appointed by the said act, or before a master in Chancery, ordinary or extraordinary, prove the signing and sealing of such memorial, and the execution of the deed or conveyance mentioned in such memorial; and in case of wills, the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators, guardians or trustees, attested by two witnesses, one whereof shall, upon his oath, before the said registers

An attestation in this case is to be written under, or indorsed on the instrument in the following terms: " Sealed and delivered by C. D. one of the executors (or otherwise) of the within-named A. B. (for the purpose of registering) in the presence of ——" Sometimes trouble is occasioned by a very prevalent opinion that, where some of the parties to a deed reside out of town, it is necessary the proof on oath, preparatory to registry, should extend to the execution by *all* the grantors.—Now, if such deed appears properly executed and attested, the proof of its execution, and that of the memorial by any one of the parties, (consonant to the form of oath contained in the beginning of this note,) will render any affidavit from the country useless. Neither is it material that the witness should see the *same* party execute the deed who signs and seals the memorial:—for instance, if the deed be made from A. to B., and the witness attests the execution of the deed by the former, his seeing the memorial executed by B. will suffice. It will be requisite, however, in such memorial to state the other attestation or attestations, if more than one, to the deed, with descriptions to *all* the witnesses; a caution on which head is given in a succeeding note. For the manner in which *several* attestations are to be mentioned in a memorial, see Appendix, Precedent No. 15.

registers or masters, or before such master in Chancery as aforesaid, prove the signing and sealing of such memorial; which respective oaths the said registers or masters, and masters in Chancery, are empowered to administer, and shall indorse a certificate thereof on every such memorial, and sign the same.

And it enacts, that every memorial of any deed, conveyance, or will, shall contain the day of the month and the year when such deed, conveyance, or will bears date, and the names and additions of all the parties (c) to such deed or conveyance, and of the devisor or testatrix of such will, and of all the witnesses to such deed, conveyance, or will, and the places of their abode (d), and shall express or mention

(c) Not merely the additions of residence and occupations, but all such further descriptions as the parties have in the deed; such as heirs at law, trustees, executors, &c.

(d) In all cases it is necessary for a solicitor to require the places of abode, and occupations of witnesses to be affixed against their names in attestations, but more essentially when deeds are to be executed in the country, as all such witnesses must be particularized in the memorial.—Very many inconveniences result from a want of this caution: and often, where instruments have been neglected to be registered for any material length of time, it has been found impossible to supply descriptions accurately. As *some* must positively be given, every care should be used to render them genuine; for, if the validity of a deed should be disputed, it would be, at least, a disagreeable circumstance to have it proved that such witnesses

mention the honors, manors, lands, tenements, and hereditaments contained in such deed, conveyance, or will, and the names of all the parishes, townships, hamlets, precincts, or extra-parochial places within the said county, where any such honors, manors, lands, tenements, or hereditaments are lying or being, that are given, granted, conveyed, devised, or any ways affected or charged by any such deed, conveyance, or will, in such manner as the same are expressed or mentioned in such deed, conveyance, or will, or to the same effect (e); and that every such deed, conveyance, and

nesses did not reside where they were described in the memorial. If a considerable time has elapsed from the date of a deed intended to be registered, and all the witnesses are dead, or the testimony of any of them not easily obtained, no further delay need originate from either cause; *as the re-execution of such deed by any one of the parties, in the presence of a new witness*, will be sufficient to effectuate the registry.—In this case an attestation must be written on the deed as follows: “ Re-sealed and re-delivered by the within-named A. B., for the purpose of registering, in the presence of —.” But it must be remembered that all the previous attestations to the deed are necessary to be noticed in the memorial.

(e) These latter words frequently lead to error in the preparing of memorials, by reason of their obtaining too extended a construction. General expressions may be avoided, such as *ways, paths, passages, &c.* and any other that do not elucidate the locality or dimensions of premises: but, in all instances, abutments and boundings (unless where a description in some memorial

and will, or probate of the same, of which such memorial is so to be registered as aforesaid, shall be produced to the registers or masters at the time of entering such memorials, who shall endorse a certificate on every such deed, conveyance, and will, or probate thereof, and therein mention the certain day, hour, and time on which such memorial is so entered or registered, expressing also in what book, page, and number the same is entered; and that the said registers or masters shall sign the said certificate when so indorsed; which certificates shall be taken and allowed as evidence of such respective registeries in all courts of record whatsoever; and that every page of such register books, and every memorial that shall be entered therein, shall be numbered, and the day of the month, and the year, and hour or time of the day when every memorial is registered shall be entered in the margents of the said register books, and in the margents of the said memorial: and that every such register or master shall keep an alphabetical calendar of all parishes (*f*), extra-parochial

memorial previously registered is referred to) must be strictly and literally inserted: and where descriptions of premises are contained in or assisted by schedules or plans, such must be introduced and delineated in the memorials.

(*f*) Great uncertainties and mischiefs were likely to be produced from the preservation of these parochial calendars,
in

parochial places and townships within the said county, with reference to the number of every memorial that concerns the honors, manors, lands, tenements, or hereditaments in every such parish, extra-parochial place, or township respectively, and of the names of the parties mentioned in such memorials : and that such registers or masters shall duly file every such memorial in order of time as the same shall be brought to the said office, and enter or register the said memorials in the same order that they shall respectively come to their hands.

And

in consequence of the creation, from time to time, of new parishes within the county, the incorporation of such with those of ancient standing, and the forming of other boundaries and divisions. As frequently as these alterations occurred, it was a long while before the correct limits of each parish could be ascertained, and even the slightest temporary uncertainty was sufficient to destroy the intention of the statute in this direction : from necessity therefore, after a perseverance of seven years, such calendars were discontinued ; but what could be done to supply this unavoidable deviation from the letter of the act, was effected by the substitution of another, in which the parochial one is combined.

This has been hitherto preserved and found effectual. It contains an alphabetical arrangement of *grantors*' and *vendors*' surnames in the first margin, in the second are those of the *grantees* and *purchasers*, and in the last margin is exhibited the *parish* in which the premises incumbered are situate, or if that is doubtful, or such premises are extra-parochial, then the name of the street or place, as it is described in the deed registered.

And it enacts, that where there are more writings than one for making and perfecting any conveyance or security, which do name, mention, or any ways affect or concern the same honors, manors, lands, tenements, and hereditaments, it shall be a sufficient memorial and register thereof if all the said honors, manors, lands, tenements, and hereditaments, and the parishes, townships, hamlets, or extra-parochial places wherein the same lie, be only once named or mentioned in the memorial or register of any one of the deeds or writings made for the perfecting of such conveyance or security, and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes, be only set down in the memorials and registers of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the said deeds, and directions how to find the registering the same (g).

And

(g) If a single conveyance or security comprises several deeds, as lease for a year, release, bargain and sale, and assignment of term, it is not necessary to set out the parcels in any but the first memorial; and much trouble may be avoided by referring from the subsequent ones, as in Appendix, Precedents Nos. 27 and 28. This observation also holds where several deeds, such

And it enacts, that all memorials of wills that shall be registered within the space of six months after

as a lease and assignments, or other transfers of the same lease, have, by neglect or want of information, been withheld from registry, and are brought *collectively* for that purpose.—See Appendix, Precedent, Nos. 5, 6, and 10.

Persons sometimes conceive, where former deeds in a title have not been registered, that the *recital* of such in the memorial of any new transfer or security will fully accomplish the purpose of defence against fraud: than which nothing can be more fallacious; for although such recital may be useful, under particular circumstances, to elucidate, and compress every description of documents affecting the property into one point of view, yet the registering of an *ulterior* deed cannot possibly operate as notice of *prior* ones.

To render this assertion fully convincing, a beneficial lease may be supposed granted from *A.* to *B.*; that *B.* assigns such lease to *C.*; and, in conclusion, *C.* disposes of his title to *D.*, a memorial of which last deed alone is registered, reciting the lease and previous assignment. *A.* the lessor and proprietor of the freehold, taking advantage of these omissions, proposes to sell a complete *unincumbered* estate in fee to *E.*, whose solicitor resorts to the alphabetical lists of grantors' names kept in the registering office, to discover whether the property offered for sale is as *A.* describes it. Having deduced a regular title down to *A.*, all investigation from the time of that assumption will be confined to *his* name, until discovery is made of any act committed by him to incumber. Now no such act can present itself under the circumstances stated: and therefore *E.* and his solicitor would accept *A.*'s title, with a confidence of its being clear of charge; and thereby, in all probability, defeat *D.*'s incumbrance.

G

There

after the death of every respective devisor or testatrix dying within the kingdom of Great Britain, or within the space of three years after the death of every respective devisor or testatrix dying upon the sea or in any parts beyond the seas, shall be as valid and effectual against subsequent purchasers, as if the same had been registered immediately after the death of such respective devisor or testatrix: and that in case the devisee, or person or persons interested in the honors, manors, lands, tenements, or hereditaments devised by any such will as aforesaid, by reason of the concealment or suppression, or contesting such will, or other inevitable difficulty, without his, her, or their wilful neglect

There is a case in *Strange, Honeycome*, ex dem. *Halpen et ux*, versus *Waldron et al.* immediately applicable to this point.

Registering an assignment is not registering the lease.

In *Middlesex*.—The defendant claimed under a lease made in 1730, by Lord Grandison, which was soon after mortgaged, and in 1731 sold out and out to the defendant. The original lease was not registered, but the first mortgage of it and the defendant's purchase were: and it not being a lease at a rack-rent the question was, Whether this was a registry within the meaning of 7 Ann. c. 20.? And the Chief Justice held it *not to be sufficient*; for the act says, the deed under which the party claims with the witnesses names shall be registered; and of this a subsequent purchaser can have no notice by the bare registry of the assignment. *And it is also required that the original be produced to the officer.*

neglect and default, shall be disabled to exhibit a memorial for the registry thereof within the respective times before limited, and that a memorial shall be entered in the said office of such contest or other impediment within the space of two years after the death of such devisor or testatrix who shall die within the kingdom of Great Britain, or within the space of four years next after the decease of such person who shall die upon the sea or beyond the seas (*b*); then and in such case the registry of the memorial of such will within the space of six months next after his, her, or their attainment of such will, or a probate thereof, or removal of the impediment whereby he, she, or they are disabled or hindered to exhibit such memorial, shall be a sufficient registry within the meaning of the act (*i*).

And

(*b*) Any decree or order from the courts of equity, or rule of the courts of law, may be registered, as is seen by Appendix, Precedent, Nos. 21, 22, and 24.

(*i*) Omissions in the registration of wills frequently occur, and indeed few, comparatively with the aggregate number, are brought to be registered until devisees are disposed to sell or incumber the property obtained under them. These omissions arise, in general, from the ignorance of the party interested, as to the propriety of the measure. When deeds are prepared by a solicitor, he is conversant in the necessity of having them registered, and invariably suggests that necessity to his client: but perhaps, in the compass of several years after

And it enacts, that in case of the concealment or suppression of any will or devise, any purchaser or purchasers shall not be disturbed or defeated in his or their purchase, unless the will be actually registered within five years after the death of the devisor or testatrix.

And in case of mortgages, whereof memorials shall be entered in the register's office, pursuant to the said act, if at any time afterwards a certificate shall be brought to the said registers or masters, signed by the mortgagee or mortgagees in
such

the death of a testator, a will and probate pass only through the hands of a devisee and his proctor; the latter of whom, although he may be acquainted with the expediency of registering, does not probably think it a duty incumbent upon him to recommend any proceeding beyond the limits of his own office.

As many instances happen where general devises comprise estates of consequence, it is sometimes expedient for gentlemen in the profession to inquire of what they are composed; which would also prevent many dangerous omissions in this respect. Wills and probates, and copies of wills officially authenticated, which have not been registered within the periods directed by the statute, are received at the office, and it is presumed would operate against persons purchasing subsequent to the registry, notwithstanding the non-existence of any decree or order to warrant the delay.

The case *Blades v. Blades*, cited in *Le Neve v. Le Neve*, page 27 of the prefatory part of this volume, and that of *Stainbridge v. Jolland* in the 40th page, will afford the best argument in recommendation of a strict adherence to the law on this subject.

such mortgage (*k*), his, her, or their executors, administrators, or assigns, and attested by two witnesses, whereby it shall appear that all monies due upon such mortgage have been paid or satisfied in discharge thereof, which witnesses shall, upon their oaths before the said registers or masters, or before a master in Chancery, ordinary or extraordinary, prove such monies to be satisfied or paid accordingly, and that they saw such certificate signed by the said mortgagee or mortgagees, his, her, or their executors, administrators, or assigns (*l*); that then and in every such case the said

(*k*) By the registering acts for York the mortgagor is likewise directed to sign the certificate of discharge.

(*l*) Many objections have originated upon this method of discharging mortgages; and conveyancers of eminence have refused to accept titles under them, when the limitation or time prescribed in such mortgages for the payment of the principal sum borrowed has elapsed, urging that although the deed in its primitive state might be merely conditional, and liable to be redeemed in law under the provisions therein expressed, yet that the condition for paying the principal money *on a day certain* not having been complied with, and the estate having by such lapse become redeemable only by the interference of a court of equity, (all legal claim being vested in the mortgagee,) that nothing but a deed of a reconveyance, under the hand and seal of the mortgagee, or his representatives, can so sufficiently invalidate the former security as to give a marketable title to the mortgagor. Persons who purchase, and their solicitors, will have in view the possibility of being incumbered with a suit growing out of any circumstance of the title;

said registers or masters shall make an entry in the
margents of the said register books against the re-
gistry

and it is worthy consideration, where a property is taken which has been under mortgage, whether a note in the form of a certificate, *without stamp or seal*, is sufficient, after the limitation, or time assigned for redemption is run out, to reinstate such property firmly and legally in the mortgagor: because the event of its not so doing would probably, at a future day, involve a purchaser in an equity contest with the representatives of the mortgagee, to obtain a more perfect discharge. The clause in the act of parliament respecting the entry of certificates contains merely a direction to the registers: it cannot be construed to alter the former law relative to deeds, and might have been intended to attach only on such mortgagees as were *duly* discharged.

I am aware of the case, *Farmer, ex dem. Earl, v. Rogers et al.* Trin. 1755, C. B. mentioned by Sir Francis Buller in his treatise on Nisi Prius, in the following terms:

“ The defendant produced a mortgage for years, by deed
“ from the plaintiff's ancestor, upon which was an indorsement
“ in hæc verba, *Received of Mrs. M. O. 500l. in the within-*
“ *recited mortgage, and all interest due to this day; and I do hereby*
“ *release to the said M. O. and discharge the mortgaged premises*
“ *from the said term of 500 years.*”

“ On a case reserved, the court held, 1st, *That these words*
“ *amounted to a surrender of the term; 2dly, That such surrender*
“ *might be by note in writing, by the statute of frauds; 3dly,*
“ *That a note in writing was not required to be stamped.*” Now, taking it for granted that an instrument like that of a certificate has been correctly conceived; long since the period of the determination referred to, to be a sufficient discharge or surrender of even a forfeited mortgage; yet, at the present day, another obvious objection occurs to these instruments, from the
act

gistry of the memorial of such mortgage, that such mortgage was satisfied and discharged according to such certificate, to which the same entry shall refer, and shall after file such certificate, to remain upon record in the said register office.

And it enacts, that the registry shall not extend to any copyhold estates (*m*) or to any leases at a rack-

act of the 23d of his present majesty, and other subsequent statutes imposing stamp duties: for, as the editor of the last edition of the *Statutes at large* observes, "it may be worthy of attention, whether the memorandum, or note in writing, required by the 4th section of the statute of frauds, ought not be stamped, under the directions of such act." It is, therefore, certainly adviseable to indorse a reconveyance on the deed of mortgage, and have it registered, in preference to any other mode of discharge: the expence will be enhanced in a trifling degree, it is true; but the precaution, it ought to be remembered, may prevent considerable trouble and delay at a future period.

For forms of certificates to discharge mortgages and judgments (the latter of which, by a regulation subsequent to the passing of the register act, are admitted, although no provision is therein made on the subject) see Appendix, Precedent Nos. 36 and 40.

(*m*) This exception of copyhold estates it is reasonable to suppose originated from a desire to save the expence of registration to persons possessing this species of property, under an idea that all transactions relative thereto had sufficient notoriety from their being entered upon the books or rolls of the manor court from whence the title to such property was derived. There are, however, deeds of copyholds not usually entered with the steward of the manor, and the existence of which could not be traced from his information.—Such are deeds of cove-

rack-rent (*n*), or to any lease not exceeding twenty-one years, where the actual possession and occupation go along with the lease (*o*), or to any of the chambers in Serjeants' Inn (*p*), the inns of court, or Chancery.

And

nant for surrenders, leases, and assignments of terms created under leases. In some instances, perhaps, leases are entered, but, in general, only the licence from the lord to his tenant to grant a lease, which may or may not take effect.

The very general terms of this exception of copyhold estates will, no doubt, induce a careful solicitor to register *all* deeds respecting this species of property not usually recorded by the steward of the manor.

(*n*) Where a mere rack-rent is reserved on a lease, which, according to Wood, Inst. 185. is "the full yearly value of the land, &c. payable by the tenant for life or years," it is clearly exempted from the necessity of registration; but if, at any period within the term, improvements are made by the enlargement of buildings, repairs, or in any other way, so that the premises demised are rendered of greater yearly value than when originally let, it remains to be considered whether, from the time of such improvements, the lease under which the same are held can be deemed a lease at rack-rent, and whether it should not from thence be registered.

(*o*) When such a lease becomes assigned for *valuable consideration*, its registry ought always to be recommended; and particularly when such assignment is by way of mortgage, for then it is clearly out of the exemption, the possession and occupation (mentioned conjunctively) being divided.

(*p*) Serjeants' Inn having been always manifestly within the city of London, or its liberties, a presumption has frequently obtained on the minds of professional gentlemen that the legislature

And that no judgment, statute, or recognizance, other than such as shall be entered into the name and upon the proper account of her majesty, her heirs and successors, which shall be obtained or entered into after the said 29th day of September 1709, shall affect or bind any honors, manors, lands, tenements, or hereditaments situate, lying, and being in the said county of Middlesex, but only from the time that a memorial of such judgment, statute, or recognizance shall be entered at the said register office (q), expressing and containing, in case
of

lature intended the act of 7 Ann. c. 20. to include, in its operation, the whole metropolis except the borough of Southwark; and the consequence has been the registry of many titles to property within the city and its liberties. All these exemptions are very loosely expressed, and leave much to be doubted by cautious individuals.

(q) A very commendable attention to the conveniency of purchasers and mortgagees is evinced in this direction, which concentrates every description of incumbrances into one immediate point of observation, and prevents the trouble and great expence of applying to the courts of record in search of judgments, under the directions of the 7th and 8th Will. 3. c. 36., and also to the books of entry of statutes and recognizances. Thus has every purchaser or mortgagee of property in the county of Middlesex an evident advantage over those who buy, or take securities in any other county (except York) by the more ready and concise method prescribed by the registering act of acquiring information relative to every incumbrance obtained against the proposed vendor or incumbrancer.

The statute for doggeting judgments, though virtually rendered useless in the registering counties, ought to be regarded

of such judgment, the names of the plaintiffs, and the names, additions, and places of abode, if any such

as still, in fact, existing. This caution arises from the observance of many judgments registered, which have not been doggeted. The statute enacts, " that no judgment not doggeted and entered in the books, (i. e. the books of the courts at Westminster,) shall affect any lands or tenements, as to purchasers or mortgagees, or have any preference against heirs, executors, or administrators in their administration of their ancestors', testators', or intestates' effects."

The derivation, use, and form of statutes merchant and staple, which are not so generally understood as other securities on land, may be learned by a reference to the statute 31st Edw. I. *de mercatoribus*; 27th Edw. III. ch. 9.; 2 Black, Com. 160.; Wood's Inst. 141.; and 4th Inst. 238.

Precedents of memorials of judgments, statutes, and recognizances, with instructions by what officers they are to be authenticated, and where sworn, are introduced in Appendix, Precedent Nos. 34, 35, 37, 43, and 44.

Uncertainty, even at the present day, seems to exist upon the question, whether judgments operate to charge *terms of years or leasehold property*, as the two following cases, answered differently by gentlemen distinguished by their experience and erudition, evince.

CASE I.

A. *against* K.

The plaintiff is an infant, and entitled to an annuity of fifty pounds, secured upon an estate at Enfield.

The Lord CHANCELLOR, by order, directed that the defendant should be at liberty to lay proposals before the master for securing the payment of the annuity; and if the master approved thereof, then that the defendant K. should give such security: but in case the master should not approve of such security,

such be in such judgment, of the defendants;
the sums thereby recovered, and the time of the
signing

rity, he was to inquire whether it would be for the benefit of the infant to let or sell the estate in question in the cause.

The defendant K. has laid before the master a proposal to demise a messuage or tenement in Middlesex, let upon a repairing lease for twenty-eight years or thereabouts at 63 l. per ann., upon which the tenant has laid out 400 l.; and which is subject to a ground-rent of only 6 l. per ann. or thereabouts. The house is mortgaged, but Mr. K. proposes to pay off the mortgage immediately.

A judgment has been obtained by J. C. J. esqr., against the defendant to the amount of many thousand pounds; and it has been objected on the part of the plaintiff, the infant, that such judgment is a lien upon the estate proposed to be secured.

Your opinion is desired on behalf of the master Mr. Eames, *whether the judgment is or is not a lien upon the estate?*

I incline to think that the judgment is a lien upon the estate. It would certainly be so if Mr. K.'s house was a freehold: but I suppose it is only a leasehold for years; and if so I think it a doubtful point whether the judgment is a lien upon it; but I incline to think it is. — Before the stat. of West. 2. 13th Edw. I. st. 1. ch. 18. no subject could on a judgment have execution of the lands of the defendant against whom the judgment was obtained, except in some special cases; 2 Inst. 394.; but by that statute, the plaintiff may elect to have a writ of execution of a moiety of the defendant's lands; and though the statute mentions lands generally, yet it extends to land in which the defendant has a term for years; 2 Inst. 396. l. 1. 2.; and it is at the option of the plaintiff either to have the term sold, or to have it extended, 8 Co. 171. The form of the writ of execution founded on this statute is a command to the sheriff, "to cause
" to be delivered to the plaintiff, at a reasonable price or extent,
" a moiety

signing thereof; and in case of statutes and recognizances, expressing and containing the date of such statute.

“ a moiety of the defendant's lands and tenements in his
 “ bailiwick, whereof the defendant on such a day (being the
 “ day on which the judgment was given) was seised; to hold
 “ the said moiety to the said plaintiff,” &c. The word *seised*
 in the writ is not properly applicable to a leasehold for years,
 but still the authorities are that a lease for years may be extended on an *elegit*; and those authorities have never been contradicted: consequently this estate of Mr. K.'s, though he has only a leasehold, may be extended pursuant to the command of a writ of *elegit*, if any should issue on the judgment, notwithstanding he should alien it before the writ issued; because the command of the writ is to extend a moiety of all the lands he had the day the judgment was given; and this form has continued since the statute of frauds 29 Car. 2. c. 3. Yet the doubt I have arises on the 16th section of that act, by which it is enacted, “ that no writ of execution shall bind the property
 “ of the goods against whom such writ of execution is sued
 “ forth, but from the time such writ is delivered to the sheriff,
 “ under-sheriff, or coroners to be executed.” A term for years is a chattel real, and sometimes comprehended under the term *goods*: and if it be so in that statute, then a *bonâ fide* sale before the writ of execution is delivered to the sheriff would be good against the execution, and so was the opinion of the lord-keeper in the case of an extent upon a statute, 1 Vern. 294., and of the court in 2 Vern. 390., and Chanc. Prec. 125. in the case of an extent at the suit of the crown, which in most cases reaches further than the subject's execution — But these are not the same with an *elegit* on the stat. Westm. 2. and therefore not in point: for in the case of an execution by *fi. fa.* or any other execution only against goods, they before the statute of frauds related to the award of execution,

statute or recognizance, the names, additions, and places of abode of the cognizors and cognizees therein,

2 Rol. Abr. 157. ; and since the statute in the subject's case, only to the time the writ is delivered to the sheriff to be executed : but the *elegit* relates to the judgment, as appears by many authorities, and the form of the writ : and, therefore, I incline to think that statute has not altered the law with respect to an *elegit*, founded on the statute Westm. 2. ; but that the same still relates to the judgment if doggeted as required by statutes later than any of the above.

G. HILL.

Linc. Inn, July 27, 1790.

CASE II.

A. B. demised to C. D. a certain messuage and premises, for a long term of years.

E. F. and G. H., trustees of the estate of the said C. D., then deceased, and E. D. his only son, and acting executor, in consideration of 1000 guineas, assigned such messuage and premises to I. K., the present possessor.

I. K. being desirous to raise a sum of money on this security, has made application for that purpose ; but an objection is raised, after searching the registry for Middlesex, (in which county the premises are,) under the presumption that the *whole* estate of C. D. was incumbered previously to the date of I. K.'s purchase by a judgment for a very considerable sum.

Your opinion therefore is requested, whether a judgment registered antecedent to I. K.'s purchase can be construed into a charge, as well upon the *leasehold* as the *real* property of I. K., or whether only upon the latter.

By the 29th Car. II c. 3. s. 18. it is enacted, " that no writ of
 " *fieri facias*, or other writ of execution, shall bind the property
 " of the goods of the person against whom such writ of execution
 " shall be sued, but from the time that such writ shall be de-
 " livered

therein, and for what sums, and before whom the same were acknowledged ; and that in order to the making an entry of such memorials of judgments, statutes, and recognizances as aforesaid, the party and parties desiring the same shall produce to and leave with the said registers or masters, to be filed in the said public or register office, a memorial of such judgment, statute, or recognizance, signed by the proper officer, or his deputy, who shall sign such judgment in the same office, or by the proper officer in whose office such statute or recognizance shall be enrolled, together with an affidavit, sworn before one of the judges at Westminster, or a master in Chancery, that such memorial was duly signed by the officer whose name shall appear to be thereunto set ; which memorial such respective officer

“livered to the sheriff to be executed.” In the present case, therefore, if the writ of execution was not delivered to the sheriff before the assignment to I. K., the property was not subject to it ; whether the writ was or was not delivered to the sheriff may be known by searching at the sheriff’s office.

CHARLES BUTLER.

Linc. Inn, 12th April 1791.

Mr. Impey in his Common Pleas Practice, last edition, fo. 504. under the title *Elegit*, espouses the opinion of Mr. Serjeant Hill, and refers to 8 Co. 171. Moor 32. Hob. 47. Cro. El. 656. 3 Co. 9. and to *his own Office of Sheriff*. The authority of *Shirley v. Watts*, 3 Atk. Rep. 200. says, a judgment creditor, before he is entitled to redeem a mortgage of a leasehold estate and bond creditor, *must take out execution*.

officer is required to give such plaintiff or plaintiffs, cognizee or cognizees, or his, her, or their executors or administrators, or attornies, or any of them, he, she, or they paying for the same the sum of one shilling; and that the said register or master shall make an entry, and likewise, if required, shall give a certificate in writing, under his hand, testified by two credible witnesses, of every such memorial of any judgment, statute, or recognizance brought to him to be so registered as aforesaid, and therein mention the certain day on which such memorial is registered or entered, expressing also in what book, page, and number the same is entered. And it enacts, that for the better and more effectual putting in execution the matters and things by the said act directed, the sworn clerk to execute the office of inrolment in the High Court of Chancery, who is appointed to inrol for the county of Middlesex, the chief clerk to inrol pleas in the Queen's Bench (*r*), the clerk of the warrants in the Court of Common Pleas, and the queen's remembrancer, or his deputy, in the Court of Exchequer, shall be the registers or masters of the office for the matters and things in the said act contained; who shall and may from time to time

(*r*) By the 25th Geo. II. c. 4. the secondary of the Court of King's Bench, for the time being, is appointed register in the room of the chief clerk.

time nominate and appoint one or more able and sufficient person or persons to be their deputy or deputies; and that the Lord High Chancellor or Lord Keeper, or Lords Commissioners of the Great Seal, the two Chief Justices and Chief Baron, or any three of them, shall from time to time have full power and authority to make such rules and orders for the better management and government of the office of registers as they shall find convenient and necessary (s). And it enacts, that if any person or persons shall at any time forge or counterfeit any entry of the acknowledgment of any such memorial, certificate, or indorsement, and be thereof lawfully convicted, such person or persons shall incur and be liable to such pains and penalties as in and by *an act passed in the fifth year of Queen Elizabeth*, intituled *An Act against Forgers of false Deeds and Writings*, are imposed upon persons for forging and publishing of false deeds, charters, or writings sealed, court-rolls, or wills, whereby

(s) Very few rules or orders have been made in regulation of the Middlesex registry:—the principal are an alteration in the hours of attendance, which are now consolidated, and made ten till three, instead of nine till twelve in the forenoon, and two till five in the afternoon; which intermission contributed greatly to the inconvenience of searching:—and an acceptance for registry of office copies of wills and of certificates to discharge judgments; neither of which are rendered admissible by the act.

whereby the freehold or inheritance of any person or persons of, in, or to any lands, tenements, or hereditaments shall or may be molested, troubled, or charged; and that if any person or persons shall at any time forswear himself before the said registers or masters, or before any judge or master in Chancery, in any of the cases therein mentioned, and be thereof lawfully convicted, such person or persons shall incur and be liable to the same penalties as if the same oath had been made in any of the courts of record at Westminster.

And it enacts, that no member of parliament shall be capable of being register, or of executing by himself, or any other person or persons, the said office, or to have, take, or receive any fee or other profit whatsoever issuing out of the said office, or for or in respect thereof; nor shall any such register or his deputy, or any person or persons receiving profit out of the said office, be at any time capable of being, or being chosen a member to serve in parliament.

A P P E N D I X.

PRECEDENT, No. I.

Memorial of an Agreement for granting a Lease.

A MEMORIAL to be registered of Articles of agreement, under seal, bearing date, &c. made between S. B. of, &c. Esq. of the one part, and R. H. of, &c. of the other part: whereby the said S. B. did covenant, promise, and agree with the said R. H., his executors, administrators, and assigns, that when and so soon as the messuage or tenement thereafter mentioned and agreed to be erected and built by the said R. H., upon all that piece or parcel of ground situate in East-street, in the parish of Saint Mary-le-bone, in the county of Middlesex, should be slated in, the vaults thereof completely turned, and the front area railing put up, upon the plan and dimensions mentioned in the schedule thereunder written; and which said piece or parcel of ground abutteth and adjoineth East, &c. (*here mention the description of the premises at large, except general words,*) he the said S. B. would immediately execute a good and sufficient indenture of lease to the said R. H.,

H 2

under

under the covenants in the now registering agreement set forth, of such the said piece or parcel or ground, and all erections and buildings thereon erected or to be erected, for and during, and unto the full end and term of ninety-nine years from Michaelmas-day now last past; subject, for the first two years of the said term, to the rent of one pepper-corn, and for the remainder of the said term to the yearly rent of six pounds and ten shillings, free from all taxes and deductions whatsoever. Which said articles of agreement were duly executed by the said S. B. in the presence of P. H. of, &c. Gentleman, and W. B. clerk to the said P. H.; and by the said R. H. in the presence of E. F. and Z. H., both of, &c. Gentlemen; and the same are hereby required to be registered by the said R. H.; as witness his hand and seal.

R. H. (L. S.)

Signed and sealed in the presence of

E. F.

Z. H. *

* In all cases two witnesses to a memorial are indispensably requisite.

PRECEDENT, No. 2.

*Memorial of an Assignment of Building Articles,
by Deed Poll indorsed thereon.*

A MEMORIAL to be registered of

A deed poll, bearing date, &c. indorsed upon certain articles of agreement, bearing date, &c. made between S. B. of, &c. of the one part, and R. H. of, &c. of the other part: by which deed poll the said R. H. did assign unto M. N. of, &c. his executors, administrators, and assigns, as well the therein within-written articles, as also all the piece or parcel of ground therein mentioned, and all his right and interest of, in, and to the same, and the messuage or tenement therein agreed to be, and which is now completely finished thereon, together with all and singular the premises situate in the parish of Saint Mary-le-bone, therein covenanted to be demised, and which are particularly described in a memorial of the said articles of agreement, registered on the day of

&c. in B. No. to hold the said articles of agreement, and all the right and interest of the said R. H. therein, unto the said M. N., his executors, administrators, and assigns, for the term, and subject to the rent mentioned in the said articles. Which said deed poll, as to the execution thereof by the said R. H., is witnessed by C. D.

H 3

of,

of, &c. Gentleman, and G. I. of the same place,
his servant ; and is hereby required to be registered
by the said R. H. ; as witness his hand and seal.

R. H. (L.S.)

Signed and sealed in the presence of

C. D.

G. I.

PRECEDENT, No. 3.

*Memorial of an Assignment of Building Articles, by
separate Deed.*

A MEMORIAL to be registered of
A deed poll of assignment, bearing date, &c. made
from R. H. of, &c. to M. N. of, &c. : whereby,
after reciting certain articles of agreement, dated
&c. made between S. B. of the one part, and the
said R. H. of the other part, registered on the
30 day of in B. No. and fur-
ther reciting that, since the date and execution of
the said articles of agreement, the said R. H. had
completely carried into effect the building of a
certain messuage or tenement, in pursuance of the
covenant entered into by him for that purpose ;
it is by the said deed poll witnessed, that in con-
sideration of three hundred pounds paid by the said
M. N. to the said R. H., he the said R. H. did
assign unto the said M. N., his executors, admi-
nistrators,

nistrators, and assigns, all his the said R. H.'s right, title, and interest in and to the said above-mentioned articles of agreement, and the piece or parcel of ground thereby agreed to be demised, and the said messuage or tenement, and all and singular other the premises, with the appurtenances thereunto belonging or appertaining; to hold for all the estate, term, and interest therein of the said R. H., subject to the payment of the ground rent, and performance of the covenants in the said agreement reserved and contained. The execution of which said deed poll by the said R. H. is witnessed by C. D. of, &c. Gentleman, and R. I. of the same place, his servant; and the same is hereby required to be registered by the said M. N.; as witness his hand and seal.

M. N. (L. S.)

Signed and sealed in the presence of

C. D.

R. I.

Where building articles are assigned, it may be found salutary (besides registering the deed of assignment) to give notice of the transaction to the ground landlord, in order to prevent his being unwarily induced to grant a lease to the person with whom he entered into treaty; who being dishonestly inclined, might take advantage of such a step, to commit fraud. On the other hand a respectable ground landlord should al-

H 4

ways

ways insist upon having the original articles restored to him, or cancelled, at the moment he executes a lease, in compliance with their terms.

PRECEDENT, No. 4.

Memorial of an Agreement, contained in a Letter, and stamp'd within the Limitation prescribed by Act of Parliament.

A MEMORIAL to be registered of

A memorandum of agreement, contained in a letter addressed to Messrs. C. H. and J. B. of, &c. bankers, and expressed in the words and figures following: "Gentlemen, 27th May 1797. In
 " consideration of the several sums advanced by
 " you on my account, and for which you demand
 " security, I send you a lease of my house in
 " Finsbury-square; my beneficial interest wherein
 " I conceive more than adequate to the debt I
 " owe you.—This you are at liberty to retain:
 " and, if the mere deposit is not satisfactory, I
 " will execute any legal deed to be prepared by
 " your solicitor, for your better security." Which memorandum of agreement is signed G. R., and addressed from Finsbury-square; and the same is also signed by the said C. H., one of the partners of the above firm, in the presence of R. F. W.
 his

his clerk; and is by the said C. H. hereby required to be registered; as witness his hand and seal.

C. H. (L. S.)

Signed and sealed in the presence of

R. F. W.

I. D.

If agreements are not very prolix, it is generally advisable to set them out, as in the last precedent; many instances occurring where memorials are obliged to be rejected when brought for registry, by reason that the persons who prepare them attempt to give an arbitrary construction to the instrument to be registered; frequently omitting passages essential to its true description. The component parts of a deed being well understood, such necessity with respect to them does not often hold; but the contrary is the case in agreements, where, in the giving a fair and candid explanation of their contents, a context is most frequently unavoidable.

PRECEDENT, No. 5.

Memorial of a Lease.

A MEMORIAL to be registered of

An indenture of lease, bearing date, &c. made between E. R. of, &c. of the one part, and H. C. of,

of, &c. of the other part: whereby the said E. R. did demise to the said H. C. all that piece or parcel of ground, &c. (*here set out the description of premises, with their boundings and dimensions, verbatim, from the deed, except the general words,*) to hold to the said H. C., his executors, administrators, and assigns, from the day of last past, for sixty-one years, at the rent of a pepper-corn for the first year and a half of the said term, and at the rent of twenty pounds for the remainder thereof. The execution of which said indenture of lease by the said E. R. is witnessed by I. R. of, &c. and I. B. his clerk; and the execution thereof by the said H. C. (for the convenience of having the same indenture registered*) is witnessed by E. M. and G. H. both of, &c.; and the same is hereby required to be registered by the said H. C.; as witness his hand and seal.

H. C. (L. S.)

Signed and sealed in the presence of

E. M.

G. H.

If a lease or any other deed be from a corporation, or public body, that affixes merely a seal without any signature, it may be registered by the lessee's executing in the manner stated in the last precedent; and

* Where the witnesses to the execution of the lessor cannot easily be procured.

and then the description of its execution will be as follows: viz. "Which said indenture is sealed with the common seal of the said mayor and corporation;" (or other body;) "and the sealing and delivery thereof by the said (the lessee), for the conveniency of registering, is witnessed by A. B. of, &c. and C. D. of," &c.

PRECEDENT, No. 6.

Memorial of an Assignment of the last-mentioned Lease, registered at the same Time therewith, and written under the foregoing Memorial.

A MEMORIAL to be registered of An indenture of assignment, bearing date, &c. made between the above-named H. C. of the one part, and G. R. of, &c. of the other part: whereby the said H. C., in consideration of one thousand pounds (or for the consideration therein expressed*) did assign unto the said G. R. all and singular the premises mentioned and described in the above memorial; to hold to the said G. R., his executors, administrators, and assigns, for the remainder of the

* The setting forth the consideration is not compulsory.

the term by the above memorialized indenture granted, subject to the rent and covenants in such indenture contained. The execution of which said indenture of assignment is witnessed by the above-named E. M. and G. H.; and is now required to be registered by the said H. C.; as witness his hand and seal.

H. C. (L. S.)

Signed and sealed in the presence of

E. M.

G. H.

PRECEDENT, No. 7.

Memorial of a Lease of an Opera Box.

A MEMORIAL to be registered of
An indenture, bearing date, &c. made between
W. T. of, &c. of the one part, and W. F. of, &c.
of the other part; whereby the said W. T., in
consideration of one thousand and fifty pounds, did
demise to the said W. F. all that box situate in
the third tier or row up-stairs on the King's side
of the King's Theatre in the Hay-market afore-
said, commonly called the Opera House, nearly
adjoining the gallery, the same box being marked
or numbered together with the liberty of
passing and re-passing, going, coming, egress and
regress to and for the said W. F., his executors,
administrators,

administrators, and assigns, and any persons in his or their company, or by his or their permission, not exceeding six persons at one time, into the said box, or any other part of the said theatre, (except as therein is excepted,) to be present at and see all and every the operas, exhibitions, and other public entertainments (the concert of ancient music excepted) to be had in the said theatre, or any part thereof; the admission for such six persons to be by silver tickets, as therein mentioned; to hold to the said W. F., his executors, administrators, and assigns, from the day of then last past, for the term of twenty-one years, at and under the yearly rent of a pepper-corn. Which said indenture of demise, as to the execution thereof by the said W. T. and W. F., is witnessed by T. P. of, &c. and T. H. of the same place, his clerk; and a memorial thereof is hereby required to be registered by the said W. T.; as witness his hand and seal.

W. T. (L. S.)

Signed and sealed in the presence of

T. P.

T. H.

PRECEDENT, No. 8.

*Memorial of an Assignment of a Lease; the Lease
being previously registered.*

A MEMORIAL to be registered of
An indenture of assignment, bearing date, &c.
made between I. I. of, &c. of the one part, and
R. S. of, &c. of the other part: whereby the said
I. I., in consideration of five hundred pounds, (*or
for the consideration therein expressed,*) did assign to
the said R. S. all and singular the premises situate
in the parish of Saint Pancras, which are parti-
cularly mentioned and set forth in a certain inden-
ture of lease, dated, &c. made between A. B.
therein described, of the one part, and the said
I. I. of the other part; a memorial whereof was
registered on the day of 179 , B.
No. to hold to the said R. S., his
executors, administrators, and assigns, for the re-
sidue of the term by the said indenture of lease
granted, subject to the rent and covenants in the
said indenture of lease contained. Which said in-
denture of assignment is witnessed, as to the seal-
ing and delivery thereof, by the said I. I., by R. R.
of, &c. Gentleman; and is hereby required to be
3 registered

registered by the said R. S. *; as witness his hand and seal.

R. S. (L. S.)

Signed and sealed in the presence of

R. R.

I. H.

PRECEDENT, No. 9.

Memorial of a Deed Poll of Assignment, indorsed upon a Lease already registered.

A MEMORIAL to be registered of

A deed poll of assignment, bearing date, &c. indorsed upon an indenture bearing date, &c. made between I. T. R. of, &c. of the one part, and D. R. of, &c. of the other part: by which deed poll the said D. R. did assign to E. F. of, &c. all and singular the premises in the said indenture mentioned and contained, situate in the parish of Saint George, Hanover-square, and which are particularly

* It is not requisite that the individual party executing the deed should execute likewise the memorial: as in the present instance, the assignee may require the registry, by signing and sealing the memorial, though the deed be under seal of the assignor only. This observation being duly impressed on the mind, as it holds in respect to *all* deeds, will frequently prevent trouble. It will be necessary, however, to recollect that one, at least, of the witnesses to the memorial must be a witness to the deed.

larly set forth in a memorial of the said indenture,
registered on the day of 179 , in
B. No. to hold for the remainder of
the term by the said indenture granted, subject to
the rent and covenants therein expressed. Which
said deed poll, as to the sealing and delivery thereof
by the said D. R., is witnessed by Z. H. of, &c. ;
and is by the said D. R. required to be registered;
as witness his hand and seal.

D. R. (L. S.)

Signed and sealed in the presence of

Z. H.

I. P.

PRECEDENT, No. 10.

*Memorial of an Assignment, by Way of Mortgage,
to be registered at the same Time with the Lease.*

A MEMORIAL to be registered of
An indenture of assignment and mortgage, bearing
date, &c. made between R. R. of, &c. of the one
part, and N. N. of, &c. of the other part: where-
by the said R. R. did assign to the said N. N.
all and singular the premises mentioned in the
above memorial, and all his right, title, and interest
whatsoever of and in the indenture of lease therein
mentioned, subject nevertheless to redemption, upon
payment by the said R. R. to the said N. N. of
the

the sum of two thousand pounds, with lawful interest for the same, at the times and in manner expressed in the now memorializing indenture. And which indenture of assignment and mortgage is witnessed by the above-named A. B. and C. D.; and is hereby required to be registered by the said R. R.; as witness his hand and seal.

R. R. (L. S.)

Signed and sealed in the presence of

A. B.

C. D.

PRECEDENT, No. 11.

*Memorial of an Assignment by way of Mortgage,
when the Lease has been previously registered.*

A MEMORIAL to be registered of
An indenture of assignment and mortgage, bearing
date, &c. made between R. R. of, &c. of the one
part, and N. N. of, &c. of the other part; whereby
the said R. R. did assign to the said N. N. all and
singular the premises situate in the parish of Saint
Paul, Covent Garden, which are mentioned and
set forth in an indenture of lease, bearing date, &c.
made between A. B. of the one part, and the said
R. R. of the other part; a memorial whereof was
registered on the day of 179 , in
B. No. to hold unto the said N. N.
for the remainder of the term by the said lease
I granted;

granted; subject nevertheless to the redemption, &c. (as in the last Precedent).

PRECEDENT, No. 12.

*Memorial of a Deed Poll (by way of Mortgage)
indorsed upon a Lease.*

A MEMORIAL to be registered of

A deed poll of mortgage, bearing date, &c. indorsed upon an indenture of lease, bearing date, &c. and made between A. D. of, &c. of the one part, and B. E. of, &c. of the other part: by which deed poll the said B. E. did assign to I. R. of, &c. all and singular the premises in the said indenture mentioned and contained, situate in the parish of Saint Luke, Chelsea, and particularly described in a memorial of the said indenture registered on the day of 179 , in B.

No. (*or, if the lease is intended to be registered at the same time with the deed poll, say registered immediately preceding this memorial*); to hold unto the said I. R. for the remainder of the term by the said lease granted; subject nevertheless to redemption, upon payment by the said B. E. to the said I. R. of the sum of five hundred pounds, with lawful interest for the same as therein expressed. Which said deed poll is witnessed by G. M. of, &c. Gentleman; and is hereby required
to

to be registered by the said B. E. ; as witness his hand and seal.

B. E. (L. S.)

Signed and sealed in the presence of

G. M.

W. L.

PRECEDENT, No. 13.

Memorial of a Deed Poll of further Charge, by way of Mortgage.

A MEMORIAL to be registered of
A deed poll of further charge, bearing date, &c. indorsed upon an indenture of mortgage, (*or lease if the former charge has been by indorsement,*) bearing date, &c. and made between I. P. of, &c. of the one part, and R. T. * of, &c. of the other part; a memorial whereof was registered on the
day of 179 , in B. No.
by which said deed poll the said I. P. did charge all and singular the premises, situate in the parish of Saint Clement Danes, with the payment to the said R. T. his executors, administrators, and assigns of a further sum of five hundred pounds, with lawful interest for the same. Which said deed

* The parties must be altered according to the circumstances.

deed poll is witnessed by I. B. of, &c. and W. H. of, &c.; and is hereby required to be registered by the said I. P.; as witness his hand and seal.

I. P. (L. S.)

Signed and sealed in the presence of

I. B.

W. H.

PRECEDENT, No. 14.

Memorial of an Assignment of Mortgage, from the Mortgagee to a third Person, by Deed Poll on the Mortgage Deed.

A MEMORIAL to be registered of

A deed poll of assignment of mortgage, bearing date, &c. indorsed upon an indenture, bearing date, &c. and made between I. B. of, &c. of the one part, and W. H. of, &c. of the other part; a memorial whereof was registered on the day of 179 , in B. No. by which said deed poll the said W. H. did assign unto G. H. of, &c. as well the therein within-written indenture, and all and singular the premises situate in the parish of Saint Pancras, thereby assigned, as also all sum and sums of money, both for principal and interest, secured and made payable to the said W. H. thereon; which said deed poll is witnessed, &c. (as in the last Precedent).

PRECEDENT, No. 15.

Memorial of an Assignment of Mortgage from the Mortgagor and Mortgagee, by separate Deed.

A MEMORIAL to be registered of
An indenture of assignment and mortgage, bearing date, &c. made between W. H. of, &c. (*the original mortgagee*) of the first part, I. B. of, &c. (*the owner of the equity of redemption*) of the second part, and G. H. of, &c. of the third part: whereby the said W. H. in consideration of five hundred pounds paid to him by the said G. H. (with the privity and consent of the said I. B.) did assign to the said G. H., and the said I. B. in consideration of five shillings to him paid by the said G. H. did assign, ratify, and confirm unto the said G. H. all and singular the premises situate in the parish of Saint Pancras, mentioned and described in a certain indenture of mortgage, bearing date, &c. made between the said I. B. of the one part, and the said W. H. of the other part; a memorial whereof was registered on the day of

179 , in B. No. to hold the said premises unto the said G. H. his executors, administrators, and assigns, for the remainder of the term of years granted thereof by an indenture of lease, recited in the said indenture of mortgage; subject nevertheless to redemption, upon payment

by the said I. B. to the said G. H. of the sum of five hundred pounds, with lawful interest for the same, at the times and in manner expressed in the now memorializing indenture. Which said indenture of assignment of mortgage, as to the execution thereof by the said W. H. is witnessed by T. D. of, &c. and M. D. his wife; and as to the execution by the said I. B. is witnessed by I. M. of, &c. and T. C. his clerk*; and the same is hereby required to be registered by the said I. B.; as witness his hand and seal.

I. B. (L. S.)

Signed and sealed in the presence of

I. M.

T. C.

PRECEDENT, No. 16.

Memorial of Assignment of the Equity of Redemption by a Mortgagor to a third Person, either absolute or conditional, referring to the original Mortgage.

A MEMORIAL to be registered of
An indenture, bearing date, &c. made between
P. P. of, &c. of the one part, and A. C. of, &c.
of

* However many parties there may be to a deed, *all* the attestations must be noticed in this manner.

of the other part: whereby the said P. P., in consideration of the sum of seven hundred and twenty pounds, to him paid by the said A. C., did assign to the said A. C. all and singular the premises situate in the parish of Saint Mary-le-bone, which were demised by a certain indenture of lease, bearing date, &c. made between S. A. of the one part, and C. W. of the other part; a memorial whereof was registered on the day of 179 , B.

No. and all the right and equity of redemption whatsoever of the said P. P. of and in the said premises; to hold to the said A. C. his executors, administrators, and assigns, for the remainder to come and unexpired of the term by the said indenture of lease demised; subject to the payment of the rent thereby reserved, and also to the payment of the principal sum of one thousand five hundred pounds, due and owing upon a certain mortgage in the indenture now to be registered recited, made between the said P. P. of the one part, and R. C. therein described of the other part; a memorial of which said mortgage was registered on the day of 179 , B. No. *. Which said indenture of which this is a memorial, as to the execution thereof by the said P. P. is witnessed by

* If the deed by the present form of memorial intended to be registered is only a mortgage, then introduce here, “ and “ subject also to redemption, &c. as in Precedent, No. 10.”

by T. M. of, &c. and I. E. M. of, &c.; and is hereby required to be registered by the said P. P.; as witness his hand and seal.

P. P. (L. S.)

Signed and sealed in the presence of

T. M.

I. K.

Where secondary Mortgages are taken, it is always advisable to give immediate notice of them to the prior mortgagee, that he may not make any advancement by further charge, and thereby diminish in value the equity of redemption.

PRECEDENT, No. 17.

Memorial of an Assignment in compliance with an Act of Parliament for Relief of Debtors, called the Lords' Act.

A MEMORIAL to be registered of
An instrument, bearing date, &c. written under a certain schedule delivered into his Majesty's Court of Common Pleas at Westminster, in pursuance of a rule of the said Court, made on the 29th day of May, in Easter term 1797, in a cause L——— against H———: by which instrument T. H. the defendant in the said cause did, by the order and
6 direction

direction of the said Court of Common Pleas, assign, transfer, and set over unto G. G. Gentleman, his executors, administrators, and assigns, all and singular the debts, premises, and effects contained in the said schedule; and which premises are therein described as follows: (that is to say,) all, *(follow the description of premises, verbatim, from the schedule,)* upon and for the several uses, trusts, ends, intents, and purposes mentioned in the act of parliament made for the relief of debtors with respect to the imprisonment of their persons, and to oblige debtors who shall continue in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in the act, to make discovery of, and deliver upon oath, their estates for their creditors' benefit. Which said instrument is signed by the said T. H. and is attested as to such signing by W. H. one of the criers of the said Court of Common Pleas at Westminster; and is also signed by the said G. G. in the presence of, and is attested by T. G. of, &c.; and is hereby required to be registered by the said G. G.; as witness his hand and seal.

G. G. (L. S.)

Signed and sealed in the presence of

T. G.

I. R.

PRECEDENT, No. 18.

Memorial of an Assignment of a Debtor's Effects, in compliance with an Act of Insolvency.

A MEMORIAL to be registered of
A deed poll, bearing date, &c. under the hand and seal of William Rix Esquire, clerk of the peace of and for the city of London: whereby, after reciting that D. R. formerly of, &c. late a prisoner for debt in his Majesty's prison of the Fleet, was discharged therefrom on the day of &c. by virtue of an act of parliament passed, &c. (*setting forth the date and title of the act of insolvency*), he the said William Rix Esquire, the said clerk of the peace, did, in pursuance of the order to him for that purpose contained in the said act, assign and convey all and singular the estates, effects, and premises of the said D. R. vested in him, to E. P. of, &c. upon the trusts, and for the intents and purposes in the said act of parliament and deed poll particularly expressed. Which said deed poll is witnessed by C. H. of, &c. and J. W. his clerk; and is hereby required to be registered by the said E. P.; as witness his hand and seal.

E. P. (L. S.)

Signed and sealed in the presence of

C. H.

T. C.

PRECEDENT, No. 19.

Memorial of an Assignment by the Sheriff of Middlesex, under a Fieri Facias.

A MEMORIAL to be registered of

An indenture of assignment bearing date, &c. made between S. L. and W. S. sheriff of the county of Middlesex, of the one part, and W. D. of, &c. of the other part; reciting a writ of fieri facias, issued against the goods, chattels, and effects of W. B. therein mentioned: by virtue whereof, and for the considerations in the now registering indenture expressed, the said sheriff did assign unto the said W. D. his executors, administrators, and assigns, all that messuage, &c. (*setting out the parcels*); to hold to the said W. D. his executors, administrators, and assigns, for and during all such term and interest as the said W. B. had therein at the time when the said writ of fieri facias was delivered to the said sheriff, or at his office. Which said indenture of assignment is witnessed by I. K. and D. F. both of, &c. Gentlemen; and is hereby required to be registered by the said W. D.; as witness his hand and seal.

W. D. (L. S.)

Signed and sealed in the presence of

D. F.

I. B.

PRECEDENT, No. 20.

Memorial of a Declaration of Trust, indorsed on a Purchase or Mortgage Deed.

A MEMORIAL to be registered of
 A deed poll, bearing date, &c. indorsed upon an indenture, bearing date, &c. made between I. R. of, &c. of the one part, and C. K. of, &c. of the other part: whereby the said C. K. did acknowledge, testify, and declare, that the sum of five hundred pounds mentioned to be advanced by him as the purchase (*or in mortgage*) of all and singular the premises in the parish of Saint Mary-le-bone mentioned and set forth in the said indenture, and a memorial thereof registered on the day of
 179 , B. No. was the proper money of I. C. of, &c. Gentleman; and that the name of the said C. K. was made use of in the said indenture only in trust for the said I. C. and for no other purpose whatsoever; and the said C. K. did by such deed poll assign unto the said I. C. his executors, administrators, and assigns, all and singular the same premises, (*and in the event of its being a mortgage say, and all sum and sums of money thereby secured,*) and all his term, right, and interest therein. Which said deed poll is witnessed by G. R. and H. T. both of, &c. and is hereby required

quired to be registered by the said C. K.; as witness his hand and seal.

C. K. (L. S.)

Signed and sealed in the presence of

G. R.

H. T.

PRECEDENT, No. 21.

Memorial of a Decree in the Court of Chancery.

A MEMORIAL to be registered of

A decree, made by his Honor the Master of the Rolls, bearing date, &c. in a certain cause between W. M. Esquire plaintiff, and I. M., C. T., and F. P., Esquires, executors of the will of R. P. Esquire deceased, and E. E. Esquire, defendants: whereby it was (amongst other things) ordered that the said defendant E. E. should deliver up to the said defendants, the executors, certain indentures of lease and release therein mentioned, bearing date the 10th and 11th days of October 1793, registered in the same year, in B. No.

and the bond and warrant of attorney therein also mentioned, bearing date the 11th day of the same October, to be cancelled. Which said indentures were made between the said R. P. deceased, of the one part, and the said E. E. of the other part; and it was by the said decree further ordered

ordered that the said E. E. should acknowledge satisfaction on the record of the judgment entered up on the said bond; and of which decree a memorial is required to be registered by the said defendant T. P.; as witness his hand and seal.

T. P. (L. S.)

Signed and sealed in the presence of

W. H.

I. B.

PRECEDENT, No. 22.

Memorial of another Decree in the same Court.

A MEMORIAL to be registered of
A decree of his Majesty's High Court of Chancery, dated, &c. wherein M. R. H. (then the wife and now widow of E. H. Esq. deceased) by W. C. her next friend, was the complainant, and T. H., E. K., T. K., the said E. H., and I. E. Esq. were the defendants: by which said decree it is set forth, amongst other things, (*any matter irrelevant to the object of registry need not be introduced,*) that the said E. H. being desirous to make a settlement of four thousand pounds bank-stock on the said plaintiff, as a separate provision for her during her coverture, as well as for a settlement in case she should survive him; and that the same might be entirely at her disposal during her coverture, the said E. H. and the said M. R. H. by indenture

denture bearing date the 26th of January 1776, made between them of the one part, and T. M. Gentleman, the defendant T. H., and S. H. Esquire of the other part, did assign to the said T. M., T. H. and S. H., and the survivor of them, the said four thousand pounds; which was duly transferred to them, upon trust, &c. (*mentioning the trusts,*) and by which decree it is also set forth that the said four thousand pounds bank-stock was transferred by the direction of the said M. R. H. and under a power reserved to her to direct the same, into the names of the said defendants T. H., E. K., and T. K. upon the trusts therein aforesaid; and that the said four thousand pounds bank-stock was sold out by the said defendants T. H., E. K., and T. K. about the 18th day of July 1777, for five thousand two hundred pounds; and that the said plaintiff having one thousand seven hundred and eighty-five pounds, part of the said five thousand two hundred pounds, in her hands, was prevailed upon by the said defendant E. K. to deposit the same with Messrs. Drummond, bankers at Charing-Cross in his name; and that afterwards the said E. K. went to the shop of the said Messrs. Drummond and took up the said one thousand seven hundred and eighty-five pounds; that the said E. K. lent one thousand three hundred pounds, part of the said one thousand seven hundred and eighty-five pounds,

to

to the defendant I. E. on his bond, and *an assignment of a certain piece or parcel of ground in the parish of Saint Mary-le-bone in the county of Middlesex, and a messuage or tenement, &c. thereon erected and built, for the remainder of a term of seventy-one years, subject to such rent as therein mentioned*; and that the said E. K. had taken the said bond and assignment in his own name, and in like manner as if the said one thousand three hundred pounds was his own proper money, and not any part of the produce of the said trust; that the said plaintiff had applied to the said defendant E. K. to assign the said premises so assigned to him as aforesaid, for securing the said one thousand three hundred pounds, upon the trusts of the said settlement; and that it was by the plaintiff's bill of complaint prayed, (amongst other things,) that it might be referred to one of the masters of the said court to approve of one or more trustee or trustees, in the stead of the said E. K. and T. K.; *and that the said defendant E. K. and the said I. E. might assign the said mortgaged premises to the said T. H. and such new trustees, to be approved as aforesaid, upon the trusts of the said settlement of the 26th of January 1776; and that, in the mean time, the said I. E. might be restrained from paying, and the said defendant E. K. from receiving from him the said I. E. or from any other person or persons whomsoever, the said principal mortgage money, and the interest*

interest due and to grow due thereon, or on any part thereof: and that the said E. K. might also be restrained by injunction from assigning the said mortgaged premises, or any of them, and also the said bond, or the principal money and interest thereby secured and to grow due thereon, or any part thereof; and that the principal money and interest might be decreed to be paid to the said defendant T. H. and such new trustee or trustees as aforesaid. And by which decree it is also set forth, that the said cause coming on to be heard before his Honor the Master of the Rolls; his Honor did order, amongst other things, that Mr. Holford, one of the masters of the said High Court of Chancery, should appoint two proper persons to be trustees in the room of the said defendants E. K. and T. K.; and that the said defendant E. K. should assign the mortgage in the pleadings mentioned for securing one thousand three hundred pounds, and interest, unto the said defendant T. H. and such new trustees to be appointed as aforesaid, upon the trusts and for the benefit of the several persons who should appear to be entitled to or interested in the said trust fund, under and according to the said settlement of the said 26th day of January 1776: and his Honor did further order, that the said defendant T. H. and such new trustees so to be appointed as aforesaid, should proceed to get in the said one thousand three hundred pounds so secured by the said mortgage, and all interest thereon computed due by the said master's report in the said

decree particularly set forth; and that they should pay the said one thousand three hundred pounds and interest, as and when they should get in the same, into the Bank of England, with the privity of the accountant-general of the said court, to be there placed to the credit of the said cause, subject to the further order of the said court; and that the said one thousand three hundred pounds should be laid out in the purchase of three per cent. annuities, in the name and with the privity of the said accountant-general, in trust for the benefit of such persons as should appear interested in or entitled to the trust fund in question in the said cause, under and according to the said settlement; and that the said accountant-general should declare the trust thereof accordingly, subject to the further order of the said court: and his Honor did further order, that the said I. E. should pay the sum of money by the said master's report appearing to be the interest of the said mortgage, due on the day of into the Bank of England, with such privity and subject to such order, and in trust as aforesaid. And which said decree is hereby required to be registered in the office for registering deeds, wills, and other matters respecting estates in the county of Middlesex, by me the said M. R. H. the plaintiff in the said cause; as witness my hand and seal.

M. R. H. (L. S.)

Signed and sealed in the presence of

B. W.

I. W.

PRECEDENT, No. 23.

Memorial of a Grant of Annuity.

A MEMORIAL to be registered of
 An indenture, bearing date, &c. made between
 M. R. of, &c. of the first part, W. F. of, &c. of
 the second part, and I. R. of, &c. a trustee nomi-
 nated by and on the behalf of the said W. F. of the
 third part: whereby the said M. R., in considera-
 tion of the sum of one thousand pounds, (*or for
 the consideration therein expressed,*) did grant, bar-
 gain, sell, and confirm unto the said W. F. and his
 assigns, for and during the natural life of him the
 said W. F., one annuity or clear yearly rent or sum
 of one hundred pounds, to be issuing and payable
 out of and charged upon all and singular the pre-
 mises, situate in the parish of Edmonton, men-
 tioned and described in a certain indenture of lease,
 (*or as the case may be,*) bearing date, &c. made
 between I. K. of, &c. of the one part, and the said
 M. R. of the other part; a memorial whereof was
 registered on the day of 179 , in B.
 No.

(*if the premises have not been described
 in any memorial already registered, the description
 must be taken verbatim from the deed of annuity*); and
 whereby also, in consideration of ten shillings, the said
 M. R. did assign unto the said I. R. his executors,
 administrators, and assigns, all and every the same

premises charged as aforesaid, and all his estate, right, and interest therein; to hold the same for the residue of the term of years by the said indenture of lease (*or other deed*) granted, but nevertheless upon the trusts and for the intents and purposes in the said deed of annuity explained. Which said indenture now to be registered is witnessed, as to the execution thereof by the said M. R., by H. O. of, &c. and S. F. his clerk; as to the execution thereof by the said W. F. is witnessed by S. B. of, &c. and S. B. jun. his son; and the execution by the said I. R. is witnessed by I. B. and W. R. his servants; and the same indenture is required to be so registered by the said M. R.; as witness his hand and seal.

M. R. (L. S.)

Signed and sealed in the presence of

I. B.

W. R.

PRECEDENT, No. 24.

A Memorial of a Rule of the Court of Common Pleas to set aside an Annuity.

A MEMORIAL to be registered of
A rule of his Majesty's court of Common Pleas,
in the words and figures following:—Michaelmas
term, in the 24th year of the reign of King
George

George III. Thursday the 20th of November. Upon reading a rule made in this cause on Monday the 10th of this instant, and the affidavit of I. L. the defendant, lately deceased; the affidavit of I. A.; the affidavits of W. G., R. H., and T. T., Gentlemen, and the memorial thereto annexed; another affidavit of the said W. G.; the affidavit of E. P.; the affidavit of F. S.; the affidavit of I. I. Gentleman; and two affidavits of the plaintiff I. H.; and on hearing counsel on both sides, it is ordered, that the judgment signed in this cause be set aside, and the bond and warrant of attorney given for securing the annuity of sixteen pounds, *together with all other deeds and securities relating thereto**, shall be delivered up to T. P. and W. G. (executors of the last will and testament of the defendant) to be cancelled, pursuant to the act of parliament for registering the grants of life annuities, and for the better protecting infants against such grants: and it is further ordered, that the said I. H. do and shall pay to the said T. P. and W. G. the costs of this application, to be taxed by one of the prothonotaries of this court. By the Court.—Ex^d, Skinn.—On the motion of Serjeant Bolton for the said T. P. and W. G.—Serjeant Adair for the plaintiff. Which said rule of court is hereby required to be registered by

* This annuity was secured on premises in the county of Middlesex, and the deed charging it registered.

W. G. of Chelsea in the county of Middlesex,
carpenter, one of the executors of the above-named
defendant I. L.; as witness his hand and seal.

W. G. (L. S.)

Signed and sealed in the presence of

E. C.

I. K.

PRECEDENT, No. 25.

*Memorial of Indentures of Lease and Release, or
Conveyance in Fee.*

A MEMORIAL to be registered of
Indentures of lease and release, bearing date re-
spectively the and day of &c; the
lease made between P. D. of, &c. of the one part,
and M. R. of, &c. of the other part; and the re-
lease made between the said P. D. and W. his wife
of the one part, and the said M. R. of the other part:
by which said lease, in pursuance of the statute
made for transferring uses into possession, and in
consideration of five shillings, the said P. D. did
bargain and sell unto the said M. R. for one whole
year, and by which said release the said P. D. and
W. his wife, for the considerations therein expressed,
did grant, bargain, sell, and release unto the said
M. R. his heirs and assigns, all that (*here describe
the parcels, or refer to a conveyance registered where*

the same premises are set out, as in Precedent No. 29);
to hold to the said M. R. his heirs and assigns
for ever. Which said indentures of lease and release,
as to the execution thereof by the said P. D., are
witnessed by P. P. of, &c. and P. N. his clerk;
and the execution of the release by the said W. the
wife of the said P. D. is witnessed by I. I. her
servant; and the same indentures of lease and
release are hereby required to be registered by the
said P. D.; as witness his hand and seal.

P. D. (L. S.)

Signed and sealed in the presence of.

P. P.

P. N.

PRECEDENT, No. 26.

*Memorial of other Indentures of Lease and Release
to a Trustee; in the latter of which a Party dis-
charges the Estate conveyed from a Legacy.*

A MEMORIAL to be registered of
Indentures of lease and release, bearing date respec-
tively the and days of &c; the
lease being for one year, and made between C. D.
of, &c. of the one part, and W. W. of, &c.
of the other part; and the release being of four
parts, and made between the said C. D. and H. his

K 4

wife,

wife, of the first part; I. G. of, &c. of the second part; the said W. W. of the third part, and I. W. of, &c. a trustee for the said W. W. of the fourth part: by which said release, for the considerations therein mentioned, the said C. D. did grant, bargain, sell, alien, release, and confirm unto the said W. W. and his heirs, all that freehold messuage or tenement, &c. (*describing the parcels, or referring as directed in the last Precedent*); to hold the same unto the said W. W., his heirs and assigns, to the use of such person or persons, for such estate and estates as the said W. W. should by deed or will appoint; and in default of such appointment, to the use of the said I. W. his heirs and assigns, during the life of the said W. W., in trust for the said W. W. and his assigns during his life; remainder to the use of the said W. W. his heirs and assigns for ever; and by the said indenture of release the said I. G. did acquit, release, exonerate, and discharge the said W. W. his heirs, appointees, devisees, and assigns, and the said messuage and premises, of and from the legacy of seven hundred pounds given to him by the will of E. K. deceased, as in the said release is mentioned. Which said indenture of lease is attested by I. H. of, &c. and I. M. of, &c.; and which said release, as to the execution thereof by the said C. D. and H. his wife, is witnessed by the said I. H. and I. M.; and by I. G. jun. and G. W., both of, &c. as to the
 execution

execution by all the other parties; and the same indentures are hereby required to be registered by the said I. G.; as witness his hand and seal.

I. G. (L. S.)

Signed and sealed in the presence of

I. H.

I. M.

If a bargain and sale accompanies the conveyance, a memorial thereof may be written upon the same piece of parchment with the memorial of the lease and release; and when there is also an assignment of term, that may come under the bargain and sale; as one description of parcels in the first memorial will suffice for all: every memorial must, notwithstanding, be separately executed and attested.

PRECEDENT, No. 27.

Memorial of Bargain and Sale attending Lease and Release; and to follow the Memorial of those Deeds.

A MEMORIAL to be registered of

An indenture of bargain and sale, intended to be inrolled in the court of bearing date, &c. made between the above-named, &c. (*stating the parties,*) of and concerning the same premises as are mentioned and contained in certain indentures
of

of lease and release; a memorial whereof is above written. Which said indenture of bargain and sale is witnessed by the above-named and and is hereby required to be registered by the said as witness his hand and seal.

** ** (L. S.)

Signed and sealed in the presence of

* * * *
* * * *

PRECEDENT, No. 28.

Memorial of an Assignment of Term, to attend the Inheritance of the same Premises and to follow the Memorial of Bargain and Sale.

A MEMORIAL to be registered of
An indenture, bearing date, &c. made between the above-named, &c. (*introducing the parties,*) purporting to be an assignment of a term of five hundred years, to attend the inheritance, of and concerning the same premises as are mentioned and set forth in the first above-written memorial. Which said indenture of assignment is witnessed by the above-named and and is hereby required to be registered by the said as witness his hand and seal.

** ** (L. S.)

Signed and sealed in the presence of

* * * *
* * * *

The

The memorials of bargains and sales, and assignments under commissions of bankrupt, may be rendered extremely short; as, after stating dates and parties names, according to the forms before laid down, it will be necessary only to say, "of and concerning all the said bankrupt's estates," &c. describing them in the general way, usual in such cases, and as they are mentioned in the deed. It must be remembered that no extraneous description can be inserted in the memorial.

PRECEDENT, No. 29.

Memorial of Indentures of Lease and Release, by Way of Mortgage.

A MEMORIAL to be registered of Indentures of lease and release, bearing date respectively the and days of &c.; the lease made between A. C. of, &c. of the one part, and C. W. of, &c. of the other part; and the release made between the said A. C. and W. his wife, of the one part, and the said C. W. of the other part: by which said lease, in pursuance of the statute made for transferring uses into possession, and in consideration of five shillings, the said A. C. did bargain and sell unto the said C. W. for one whole year, and by which said release

lease the said A. C. and W. his wife did grant, bargain, sell, alien, release, and confirm unto the said C. W. (*here set out the parcels as in the release, or refer to the registry of a conveyance where they have been described as follows*), all and singular the premises, situate in the parish of Saint Mary-le-bone, mentioned and comprised in certain indentures of lease and release, bearing date, &c. the lease made between, &c. and the release between, &c.; a memorial whereof was registered on the day of 179 , in B. No. ; to hold to the said C. W. his heirs and assigns for ever; subject nevertheless to redemption, upon payment by the said A. C. his heirs, executors, administrators, or assigns, to the said C. W. his heirs or assigns, of the sum of one thousand pounds, and lawful interest, as in the said indenture of release now to be registered is expressed. Which said indentures of lease and release are respectively witnessed, as to the execution thereof by the said A. C., by I. D. of, &c. and I. H. his clerk; and the execution of the said release, by the said W. the wife of the said A. C., is witnessed also by the said I. D.; and the same are hereby required to be registered by the said C. W.; as witness his hand and seal.

C. W. (L. S.)

Signed and sealed in the presence of

I. D.

I. H.

If

If a mortgage be by demise, after describing the date and parties, it will be necessary only to follow the words of grant, as expressed in the deed, viz. Whereby the said A. C. did grant, bargain, sell, and demise, &c.; and to pursue the same course in respect to the habendum.

PRECEDENT, No. 30.

Memorial of an Indenture declaring the Uses of a Fine.

A MEMORIAL to be registered of
An indenture, bearing date, &c. made between
I. R. of, &c. and R. his wife, of the one part, and
I. W. of, &c. of the other part: whereby it is
covenanted and declared, that a certain fine for
conuſance de droit come ceo, &c. agreed to be
levied by the ſaid I. R. and R. his wife, at the
time or times therein mentioned, of and concern-
ing (*here ſet forth the premises*), ſhould be and
enure, &c. (*declaring the uses as expreſſed in the
deed, or ſaying generally*) to the uſes, intents, and
purpoſes in the now memorializing indenture ex-
plained. Which ſaid indenture is witneſſed by C. L.
of, &c. and E. L. his ſon; and the ſame is hereby
required to be regiſtered by the ſaid I. R.; as witneſs
his hand and ſeal.

I. R. (L. S.)

Signed and ſealed in the preſence of

C. L.

E. L.

PRECEDENT, No. 31.

Memorial to register a Deed after all or any of the Parties are dead.

A MEMORIAL to be registered of
An indenture, bearing date, &c. made between,
&c. (*follow the foregoing precedents in the statement of parties and parcels, and the description of the deed and conclude thus*). Which said indenture, as to the execution thereof by the said T. D. and B. S. (*the parties who had originally executed*), is witnessed by A. B. and C. D. both of, &c.; and as to the execution thereof by I. K., executor (*or administrator as the case may be*) of the last will and testament of the said T. D., is witnessed by L. M. of, &c. and M. W. of, &c.; and the same is hereby required to be registered by the said I. K.; as witness his hand and seal.

I. K. (L. S.)

Signed and sealed in the presence of

L. M.

M. W.

PRECEDENT, No. 32.

Memorial to register a Deed previously executed by all Parties, where there is a Difficulty to procure the Attendance of any of the original Witnesses to prove such Execution.

A MEMORIAL to be registered of
An indenture, bearing date, &c. made between
(*pursuing the directions contained in the last precedent, and conclude thus*). Which said indenture, as to the execution thereof by all the said parties, is witnessed by A. B. of, &c. and C. D. of, &c. (*or if there are several attestations enumerate them*); and as to the re-execution thereof by one of the said parties, for the purpose of registering, is witnessed by E. F. of, &c. and G. H. his clerk; and the same indenture is now required to be registered by the said * * * ; as witness his hand and seal. * * * (L. S.)

Signed and sealed in the presence of

E. F.

G. H.

In marriage settlements, or deeds of family trust, the directions before communicated will supply every requisite intelligence, except in one particular, namely, the necessity, or otherwise, of introducing in the memorial the uses and limitations. If they are not
very

very extended, and no reason presents itself for the omission, they are generally inserted, under an idea that the registry is a depôt for the safe custody of titles, in case deeds are destroyed. Should they be intended for introduction, their whole essence at least must be given, with the avoidance only of general words: on the contrary, should it be proposed to omit them, the expressions of the habendum in the memorial will be to the following effect: " To hold unto the said and
 " &c. upon the trusts, and for the uses,
 " ends, intents, and purposes in the said
 " indenture now to be registered particu-
 " larly expressed and declared of and con-
 " cerning the same."

PRECEDENT, No. 33. 1

Memorial of a Renter's Share in Drury-Lane Theatre.

A MEMORIAL to be registered of
 An indenture, bearing date, &c. made between
 A. W. of, &c. R. F. of, &c. and T. H. of, &c.
 of the one part, and P. W. of, &c. of the other
 part: whereby the said A. W., R. F., and T. H.,
 by virtue of an indenture of thirteen parts, bearing
 date

date the 13th day of June in the year of our Lord 1793, and of another indenture of two parts, bearing date the day after the date of the said indenture of thirteen parts, and in part execution of the trusts thereby respectively reposed in them, did grant, bargain, and sell unto the said P. W. her executors, administrators, and assigns, one clear rent or sum of two shillings and sixpence for every night whereon any theatrical or other performance should be publicly exhibited in the new Theatre-Royal of Drury-Lane, either by virtue of the then present or any future patent or patents, licence or licences, which might be granted to or acquired by the proprietors or trustees of the said theatre, or in any other theatre to be erected or occupied by virtue of such patent or patents, licence or licences, or any of them, in case the said new theatre should be destroyed by fire or disused; and did thereby charge and make the same rent to be issuing and payable upon and out of the said theatre and premises, and the rents and profits thereof; to hold the same rent unto the said P. W. her executors, administrators, and assigns, for the term of one hundred and three years, to be computed from the 25th day of December 1791. The execution of which said indenture by the said A. W., R. F., and T. H. is witnessed by I. S. of, &c. and W. L. of, &c.; and the execution thereof by the said P. W. is witnessed by G. P.

L of,

of, &c. ; and the same is hereby required to be registered by the said P. W. ; as witness her hand and seal.

P. W. (L. S.)

Signed and sealed in the presence of

G. P.

E. L.

PRECEDENT, No. 34.

Memorial of a Judgment.—The common Form.

A MEMORIAL to be registered of
A judgment in his Majesty's Court of King's
Bench, (*or as the case may be,*) of term
in the year of the reign of King George
the Third, between A. B. plaintiff and C. D.
defendant, in a plea of debt for pounds,
and costs sixty-three shillings.

(Leave a space of about an inch, and proceed thus :)

I do hereby certify, that judgment was signed in
the above cause the day of 179 .

R. F.

(Immediately after which certificate engross the following affidavit :)

I. I. clerk to K. L. of the Inner Temple, London, Gentleman, maketh oath and faith, that he
was

was present and did see R. F. Esquire, Secondary of the Court of King's Bench, sign the above certificate.

I. I.

Sworn at the Public Office in
Southampton Buildings, Chan-
cery-Lane, this day of
179 , before me,

I. E.

The judgment being in the King's Bench, the above certificate may be signed by Robert Forster Esq., as secondary, or Frederick Groves Esq. his deputy; or, in their absence, by Peter Prevost Esq., clerk of the dockets, or Mr. Clarke his deputy: in the Common Pleas, by Mr. Sherwood or Mr. Hewlett of the prothonotaries' office; and in the Exchequer, by Thomas Dax Esq., deputy clerk of the Pleas there. The usual stamp must be attached to the affidavit; which is sworn before a Master in Chancery at the Public Office, or before a Judge in either of the Courts of Record at Westminster.

PRECEDENT, No. 35.

*Memorial of a Judgment, proposed to extend to
Leasehold Property.*

A MEMORIAL to be registered of
A judgment in his Majesty's Court of Common
Pleas, of term in the year of the
reign of King George the Third, between I. R.
plaintiff, and P. P. now or late of the parish of
Saint Mary-le-bone in the county of Middlesex,
Gentleman, defendant, for six hundred and fifty-
three pounds damages; and also of a writ of
fieri facias issued thereon, directed and delivered to
the sheriff of Middlesex, to levy the damages
aforesaid on the goods and chattels of the de-
fendant.

I do hereby certify, that judgment was signed in
the above cause the day of 179 .
T. S.

I do hereby certify, that a writ of fieri facias in
the above-mentioned cause, for the above-men-
tioned damages, was left at the office of the sheriff
for the county of Middlesex, on the day of
179 .

I. B.

G. G. of, &c. maketh oath, that he was present
and did see T. S. Gentleman, clerk to the protho-
notaries of the Court of Common Pleas, and I. B.
Gentleman,

Gentleman, who acts as under-sheriff for the county of Middlesex, sign the certificates respectively above written.

G. G.

Sworn, &c. (*as directed in the note to the last Precedent*).

The idea of the second certificate has originated from the opinion of Mr. Butler, in reference to the statute of frauds and perjuries, set out in page 93.

PRECEDENT, No. 36.

A Certificate of the Plaintiff in a Judgment, to effect its Discharge from the Register Books.

To the Registers for the County of Middlesex.

I, A. B. of, &c. do hereby certify, that C. D. of, &c. (*the defendant*) hath paid and satisfied to me all such sum and sums of money as was or were due and owing upon a judgment recovered in his Majesty's Court of _____ of the term of _____ in the _____ year of the reign of King George the Third, by me the said A. B. against the said C. D. for _____ debt and _____ costs; a memorial whereof was registered on the _____ day of _____ in the year of our Lord 179 , in B. _____ No. _____ and I do hereby

L 3

hereby require an entry of such payment and satisfaction to be made in the registers' book wherein the same is registered; as witness my hand this
 day of in the year of our Lord
 179 .

A. B.

Signed, and satisfaction acknowledged, in the presence of

I. K. of, and
 L. M. his clerk.

The same attendance of the witnesses and form of oath are necessary in discharging judgments as directed on discharging mortgages. See note on Precedent No. 40.

PRECEDENT, No. 37.

Memorial of a Judgment of Outlawry.

A MEMORIAL to be registered of
 A judgment of outlawry in his Majesty's Court of King's Bench, of Michaelmas term in the thirty-third year of the reign of King George the Third, against H. S. late of at the suit of S. H. for five hundred pounds damages.

22d December 1792. I do hereby certify, that the judgment of outlawry above referred to was filed with me, and now remains in my custody,
 as

as clerk of the treasury of the Court of King's Bench at Westminster.

A. E.

A. R. of, &c. maketh oath and faith, that on the day in the year above mentioned, he this deponent was present and did see A. E. Esq. clerk of the treasury of the Court of King's Bench sign the above certificate.

A. R.

Sworn, &c.

A certificate in the form pointed out in Precedent No. 34, with the addition of the words "of outlawry," may be subscribed by the officer who signs the judgment, or the one above recommended may be substituted by Andrew Edge Esq. the clerk of the treasury, so soon as such judgment becomes filed with him. For other directions see Precedent No. 34.

PRECEDENT, No. 38.

A Certificate to reverse a Judgment of Outlawry.

In the King's Bench, between I. S. and R. S. plaintiffs, and T. A. defendant (*here leave a space of about an inch*). I, A. G. of, &c. Gentleman, (*clerk of the outlawries,*) do hereby certify, that the outlawry pronounced in this cause, and all the

proceedings thereon, are reversed, pursuant to an order in the same cause lately made for that purpose in the said Court; as witness my hand this day of 179 .

A. G.

Witness I. W.
I. R.

I. R. of, &c. maketh oath and faith, that he this deponent did see A. G. clerk of the outlawries of the said Court sign the above-written certificate.

I. R.

Sworn, &c. (*before a Judge
or Master in Chancery*).

PRECEDENT, No. 39.

A Memorial of a Will, Probate or Office Copy.

A MEMORIAL to be registered of

The probate (*or the original will, or the office copy, as the case may be*) of the last will and testament of T. R. late of in the parish of in the county of bearing date, &c. : by which will the said testator did give and devise unto, &c. (*as in the will*); to hold, &c. (*if the devisor be in trust, say*) upon the trusts, and for the ends, intents, and purposes in such will particularly expressed. Which said will was executed by

the said testator, in the presence of A. B. of, &c. C. D. of, &c. and E. F. of, &c.; and the same (or the probate or office copy thereof) is hereby required to be registered by Y. Z. * one of the devisees therein named; as witness his hand and seal.

Y. Z. (L. S.)

Signed and sealed in the presence of

G. W.

S. H.

On registering wills, probates, &c. the oath administered to the witness attending the register has reference to the signing and sealing of the memorial only; in which it differs from the principle of registering deeds; where the witness proves also the execution of the instrument to which such memorial refers.

* The registry may be required by any one of the devisees, his or their heirs, executors, administrators, guardians, or trustees.

PRECEDENT, No. 40.

A Certificate to discharge a Mortgage.

To the Registers for the County of Middlesex.

I, A. B. of, &c. (*the mortgagee * or mortgagees in the deed, or his or their executors or administrators,*) do hereby certify, that C. D. of, &c. hath paid and satisfied all such sum and sums of money as was or were due and owing upon an indenture of mortgage, bearing date the day of in the year of our Lord 179 , made between the said C. D. of the one part, and me the said A. B. of the other part; a memorial whereof was registered on the day of the same month of 179 , B. No. and I do hereby require an entry of such payment and satisfaction to be made in the registers' book wherein the same is registered, pursuant to the act of parliament in that case made and provided; as witness my hand this day of 179 .

A. B.

Signed, and satisfaction acknowledged, in the presence of

I. K. of, &c.

L. M. of, &c.

* And in Yorkshire must be executed by mortgagor as well as mortgagee.

Both

Both the witnesses to certificates must be sworn before the register, (or, the affidavit being made in the country, before a Master extraordinary in Chancery,) that they severally saw the mortgagee or mortgagees sign such certificate, and that they heard him or them, at the time of such signing, acknowledge that all money due on the mortgage (or judgment) therein referred to was fully paid and satisfied. Where the party or parties acknowledging satisfaction reside at a distance from London, an affidavit must be written on parchment, with the proper stamp, and sworn before a Master extraordinary in the High Court of Chancery. Both the certificate and affidavit may be upon the same piece of parchment, and the latter will be in the terms following :

PRECEDENT, No. 41.

Affidavit of seeing Certificate of Satisfaction signed, and bearing Acknowledgment.

E. F. of, &c. and C. D. of, &c., each speaking for himself severally, make oath and say, that they were present and did see the above-named A. B.
sign

sign the above certificate, and the said A. B. at the time of signing the same did, in these deponents' hearing, acknowledge himself to be fully paid and satisfied for all sum and sums of money due and owing upon the indenture of mortgage * mentioned in the said certificate.

E. F.
C. D.

Sworn at in the county
of this day of
179 , before me,

I. Z.

A Master extraordinary in Chancery.

PRECEDENT, No. 42.

Affidavit of the Execution of a Deed and Memorial, necessary only when all the Parties live remote from London. To be engrossed on Parchment, with the proper Affidavit Stamp annexed.

A. B. of, &c. maketh oath and faith, that he this deponent was present and did see C. D. of, &c. sign and seal the memorial *hereunto annexed* (or if the memorial and affidavit are engrossed upon the same piece of parchment, which is the best me-

* Or judgment.

thod,

thod, then say the above memorial); and this deponent further saith, that he was present and did see the deed referred to in such memorial duly signed, sealed, and delivered by the said C. D.; and *(setting forth the parties whose execution the witness has attested)*.

A. B.

Sworn, &c. *(as the last Precedent)*.

PRECEDENT, No. 43.

Memorial of a Statute.

A MEMORIAL to be registered of
A statute staple *(or statute merchant, as the case may be)*: whereby A. B. of the parish of
in the county of Gentleman, acknowledged before the Right Honorable Lloyd Lord Kenyon, Chief Justice of his Majesty's Court of King's Bench, that he owed to C. D. of the parish of in the county of Gentleman, the sum of two thousand pounds, to be paid on the day of 179 . .

(Here leave a slight break.)

I do hereby certify, that the recognizance above mentioned was inrolled the day of
179 .

W. C.

E. T. clerk to G. H. of, &c. maketh oath, that he did see W. C. Esq. clerk of the recognizances, in the nature of statute staple, sign the above certificate.

E. T.

*To be sworn before a Master
in Chancery, and written
upon parchment with proper
affidavit stamp.*

PRECEDENT, No. 44.

*A Memorial of a Recognizance in the Court of
Chancery.*

A MEMORIAL to be registered of
A recognizance entered into in his Majesty's
High Court of Chancery, bearing date at Westminster the day of 179 , and acknowledged before P. H. Esq. one of the Masters of the said Court : whereby A. B. of in the parish of in the county of Gentleman, before our Lord the King in his Chancery appearing, owned himself indebted to Sir Richard Pepper Arden, Knight, Master of the Rolls, and I. E. Esq. one of the Masters of the said Court, in the sum of two thousand pounds, to be paid to the said Sir Richard Pepper Arden and I. E. or to either of them, their or either of their executors or administrators, on the day of of

of next ensuing the date of the said recognizance.

I do hereby certify, that the recognizance above mentioned was inrolled in the High Court of Chancery the day of 179 .

E. H.

W. H. of, &c. maketh oath, that he did see E. H. Esq. deputy clerk to execute the office of inrolment in the High Court of Chancery for the county of Middlesex, sign the above certificate.

W. H.

Sworn, &c. (*as in the instances of judgments*).

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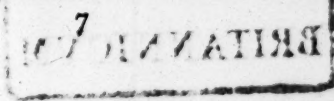
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